Jurisdictional Statement

Office - Supreme Court, U.S.
FILED
MAR 16 1982
ALEXANDER L. STEVAS,
CLERK

No. 81-1738

IN THE

Supreme Court of the United States

October Term, 1981

THE FIRST NATIONAL BANK OF SAINT PAUL,
Appellant,

vs.

STATE OF MINNESOTA, BY JIM LORD,
ITS TREASURER,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MINNESOTA

JURISDICTIONAL STATEMENT

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QUESTION PRESENTED

Whether Minn. Stat. § 345.53 (1980), which authorizes the State Treasurer to examine the records of any holder of unclaimed property, is preempted as to national banks by virtue of 12 U.S.C. § 484, which expressly restricts visitorial powers over national banks.

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JURISDICTIONAL STATEMENT

The First National Bank of Saint Paul, appellant, appeals from the order of the Supreme Court of the State of Minnesota, dated December 17, 1981, reversing the Order of the District Court which granted appellant's Motion for Summary Judgment, and holding that Minn. Stat. § 345.53 (1980), as applied to permit the State Treasurer to examine the books and records of national banks, does not violate the Supremacy Clause of the United States Constitution.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Minnesota is reported at 313 N.W.2d 390 (Minn. 1981) and is reprinted in the Appendix hereto, page A-1 *infra*.

The Order and Memorandum of the District Court, Second Judicial District, Ramsey County, Minnesota, is unreported and is reprinted in the Appendix hereto, page A-11, *infra*.

JURISDICTION

The Order of the Supreme Court of the State of Minnesota was filed December 17, 1981. A notice of appeal was duly filed by appellant in the Minnesota Supreme Court on February 24, 1982. This appeal is being docketed in this Court, within 90 days of that Order. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

CONSTITUTIONAL PROVISION AND STATUTES

a. United States Constitution, Art. VI, Cl. 2:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the land . . . ."

b. 12 U.S.C. § 484:

"No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized."

c. Minn. Stat. § 345.53 (1980):

"The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if

he has reason to believe that such person has failed to report property that should have been reported pursuant to sections 345.31 to 345.60."

The text of the entire Minnesota Uniform Disposition of Unclaimed Property Act, Minn. Stat. §§ 345.31-345.60 (1980) is reprinted in the Appendix hereto, pages A-20 - A-41, *infra*. The text of 12 C.F.R. § 7.6025(b) is reprinted in the Appendix hereto, page A-42, *infra*.

STATEMENT OF THE CASE

This appeal challenges the constitutionality of a 1969 Minnesota statute, enacted to permit the state treasurer to examine the records of any holder of unclaimed property, insofar as it was applied for the first time in 1979 to the appellant national bank. Because visitorial powers over national banks have been conferred by Congress on the Comptroller of the Currency of the United States and not the state treasurer, this application of the Minnesota Statute constitutes an exercise of unauthorized visitorial power over a national bank and is in conflict with the Supremacy Clause of the United States Constitution.

Appellant, The First National Bank of Saint Paul (the "Bank"), questions the constitutionality of the examination provision of the Minnesota Uniform Disposition of Unclaimed Property Act, Minn. Stat. §§ 345.31-345.60 (1980) (the "Act") insofar as it permits the state treasurer to examine the records of national banks. Generally, the Act sets forth detailed provisions regarding the disposition of property which is presumed abandoned. Every person holding unclaimed property, such as the Bank, is required to file an annual report of such property with the state treasurer. Minn. Stat. § 345.41 (1980). The Bank has filed all such unclaimed property reports. If the

owner does not claim the property, the holder (such as the Bank) then pays or delivers such abandoned property to the state treasurer. Minn. Stat. § 345.43 (1980). The state then assumes custody of the property in the event that the owner later appears to reclaim it. Minn. Stat. § 345.44 (1980).

In November 1979, appellee, The State of Minnesota, by Jim Lord, its Treasurer (the "state treasurer") notified the Bank of his office's intention to conduct an examination of the Bank's records. The state treasurer is authorized under the Act to examine the records of "any person" if he has "reason to believe" that such person failed to report abandoned property. Minn. Stat. § 345.53 (1980).[1] Thereafter, Bank representatives voluntarily met with members of the state treasurer's office in order to cooperate and attempt to resolve differences. However, in light of the Comptroller's exclusive visitorial power over national banks, the bank refused to permit the examination demanded by the state treasurer.

On May 23, 1980, the state filed this action seeking a declaration that it is entitled by Minn. Stat. § 345.53 (1980) to examine the Bank's records and an injunction barring the Bank from refusing to permit the requested examination. The matter was heard by the Honorable Charles A. Flinn, Jr., judge of Ramsey County District Court, on cross motions for summary judgment. The Bank provided the District Court with the affidavit of the Chief National Bank Examiner of the Office of the Comptroller of the Currency of the United States expressing the Comptroller's position that the state treasurer's proposed examination of the Bank was preempted:

> Since there is a specific provision in the National Bank Act granting the Comptroller exclusive visitorial powers

[1] The Bank has denied that the state treasurer had "reason to believe" that it failed to report unclaimed property. That issue was not presented to the Minnesota Supreme Court (see App. A-3) and is not before this Court.

> over national banks (12 U.S.C. §484), it is the position of the Office of the Comptroller of the Currency that federal law has preempted the exercise of visitorial powers by state agencies acting pursuant to state law. Accordingly, state authorities have no legal right to compel national banks to submit to examination for compliance with state laws, including unclaimed property laws, or to compel access to national bank books and records for the purposes of examining for or enforcing compliance with state laws, including unclaimed property laws. 12 C.F.R. § 7.6025. (App. A-20.)

On January 14, 1981, the district court issued its Order Granting Summary Judgment in favor of the Bank. Judge Flinn found:

> . . . that the state, in investigating possible violations of its Unclaimed Property Act at defendant bank, is attempting to exercise "visitorial powers."
>
> * * * * *
>
> Because the Comptroller of Currency has the exclusive right to examine the bank's records and report violations of state unclaimed property law there would be a conflict with this exclusive authority if the state were allowed to duplicate the Comptroller's examination. (App. A-13.)

On January 16, 1981, judgment was entered in favor of the Bank.

On March 9, 1981, the state treasurer appealed to the Supreme Court of the State of Minnesota. On December 17, 1981, the State Supreme Court reversed the judgment of the District Court and held "that the power sought to be exercised by the treasurer is not the exercise of visitorial powers and is not preempted by the federal statute." (App. A-1.)

THE FEDERAL QUESTION PRESENTED BY THIS APPEAL IS SUBSTANTIAL

Congress has established a comprehensive federal regulatory framework to govern the activities of national banks and assure their compliance with all applicable laws. The National Bank Act 12 U.S.C. §§ 21, *et seq.* constitutes "by itself a complete system for the establishment and government of national banks." *Cook County National Bank v. United States*, 107 U.S. 445, 448 (1833). National Banks are a separate system of financial institutions, independent of state law except to the extent that Congress provides otherwise. *Anderson v. Abbot*, 321 U.S. 349 (1944). This principle of federal dominance was enunciated in *Davis v. Elmira Savings Bank*, 161 U.S. 275 (1896), where the Court stated:

> National banks are instrumentalities of the federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a state to define their duties or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation or impairs the efficiency of these agencies of the federal government to discharge the duties for the performance of which they were created. *Id.* at 283.

In light of this long-standing rule against state interference with the conduct of national bank affairs, and an express intent of Congress in 12 U.S.C. §484 to limit visitations of national banks to the Comptroller of the Currency or other authorized federal officials, the state supreme court's order per-

mitting the state treasurer to examine the Bank's records should not be allowed to stand.

Congress has charged the Comptroller of the Currency with the responsibility of the supervision and regulation of national banking associations. 12 U.S.C. § 1, *et seq.* In connection with such supervision and regulation, the Comptroller is exclusively authorized to make a thorough examination of all affairs of all national Banks. *Easton v. Iowa*, 188 U.S. 220 (1903); 12 U.S.C. § 481. Indeed, the National Bank Act, ". . . in deference to the delicate and sensitive interests involved, contemplates exclusive supervision of [national] banks by the Comptroller of the Currency and confidential treatment by him of the matters developed as to their internal affairs" *Bank of America v. Douglas*, 105 F.2d 100, 104 (D.C. Cir. 1939).

In 12 U.S.C. § 484, Congress specifically provided that national banks shall not be subject to visitations by any persons other than those which are expressly authorized. The Court has expressly noted that this section occupies the entire field of visitorial powers over national banks and that state laws purporting to create a right of visitation are invalid. *Guthrie v. Harkness*, 199 U.S. 148 (1905). There the Court stated that § 5241 Rev. Stat., the predecessor to 12 U.S.C. § 484, revealed Congress' intent:

> . . . that in other sections of the law it had made full and complete provision for investigation by the Comptroller of the Currency . . . . It was the intention that this statute should contain a full code of provisions upon the subject, and that no state law or enactment should undertake to exercise the right of visitation over a national corporation. Except insofar as such corporation was liable to control in the courts of justice, this act was to be the full measure of visitorial power. *Id.* at 159.

Guthrie v. Harkness makes it abundantly clear that section 484 means what it says, *vis*, that state law may not create or permit the right of visitation over a national bank. Since Congress has "unmistakably ordained" preemption as to the exercise of visitorial powers over national banks, any effort by the state treasurer to exert such visitorial power with respect to the Bank is preempted.

The district court found that the state treasurer's proposed examination constitutes a "visitation". In *Guthrie v. Harkness, supra*, 199 U.S. at 158,[2] the Court approved the following definition of "visitation" in *First National Bank of Youngstown v. Hughes*, 6 F. 737 (Cir. Ct., N.D. Ohio 1881):

> Visitation, in law, is the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce an observance of its laws and regulations. Burrill defines the word to mean "inspection; superintendence; direction; regulation."

The state treasurer's proposed examination herein constitutes a "visitation" within the meaning given that term in *Guthrie v. Harkness* since his very purpose is to act as the Bank's superior in examining into the Bank's records and manner of conducting its banking business and to enforce an observance of the state Act.

As the chief national bank examiner's affidavit submitted to the courts below indicates, the Comptroller examines national banks for compliance with state unclaimed property

[2] The Court held in *Guthrie v. Harkness* that "visitorial powers" do not include the common law right of a bank shareholder to inspect the books of the business in which he has an ownership interest to determine the value of the stock. The Court noted that the right of visitation is a "public right" to enforce the law, not a private right of a private citizen. 199 U.S. at 158-59.

laws and requires banks to correct any violations. (App. A-20.) Because of the Comptroller's exclusive visitorial powers over national banks conferred by 12 U.S.C. § 484, the Comptroller has expressed his position that the state treasurer's proposed examination of any national bank for compliance with the state act has been preempted by federal law. (App. A-20.) The Comptroller's interpretive ruling regarding 12 U.S.C. § 484 supports the position taken by the Comptroller in his affidavit. 12 C.F.R. § 7.6025. (App. A-42.)

The Comptroller's and Bank's positions herein are supported by a recent lower court decision. *National State Bank, Elizabeth, N. J. v. Long*, 630 F.2d 981 (3rd Cir. 1980). There the Third Circuit Court of Appeals held that the state substantive law prohibiting redlining was not preempted as to national banks, but that enforcement of the state statute was the responsibility of the Comptroller rather than the state commissioner. *Id.* at 989. In construing 12 U.S.C. § 484, the court noted that "visitorial" powers generally "encompass examination of the bank's books and records." *Id.* at 989. The court then ruled that ". . . exclusivity of the power to examine [a national bank's records to enforce the state substantive law] is a reasonable interpretation of the National Bank Act." *Id.* at 989.[3]

As *Long* and other decisions indicate, national banks may be subject to state law. But such laws are inapplicable to national banks if they ". . . tend to impair or destroy their efficiency as federal agencies or conflict with the paramount

[3] The Bank herein agrees that the substantive provisions of the state Act apply to it, and indeed the Bank has filed unclaimed property reports with the state treasurer. See *Anderson National Bank v. Luckett*, 321 U.S. 233 (1944). Rather, the Bank objects only to the state treasurer's efforts to control the Bank's internal affairs by enforcing a procedural, regulatory function which has been reserved by Congress for the Comptroller.

law of the United States." *First National Bank in St. Louis v. Missouri*, 263 U.S. 640, 656 (1924). Since the state treasurer's proposed examination would impair the Bank's efficiency, by subjecting it to duplicative review and supervision, and would conflict with the exercise of the regulatory authority granted the Comptroller by Section 484, it is thereby preempted. Cf. *Ray v. Atlantic Richfield Corp.*, 435 U.S. 151, 157 (1978); *State of North Dakota v. Merchants National Bank and Trust Co.*, 634 F.2d 368 (8th Cir. 1980).

Preserving a strong dual banking system, which was established by Congress in the National Currency Act of 1863 and the National Bank Act of 1964, and confidentiality in national bank records[4] has long been an area of federal concern. Historically, Congress has believed that state supervision of national banks could impair the ability of those banks to perform the federal functions which they were designed to serve. *See Bank of American National Trust and Savings Association v. Douglas*, 105 F.2d 100 (D.C. Cir. 1939). To permit the state treasurer to intrude into the Bank's internal affairs and records to enforce compliance with a state law, when that function has already been reserved by Congress for the Comptroller, would thwart Congress' purpose and create gross interference with the national banking system.

It should be noted that unclaimed property laws have been enacted in versions similar to the Minnesota Act by 29 other states. The identical issue presented by this appeal is now

[4] Federal law prohibits disclosure of the Comptroller's report of its examination. 5 U.S.C. § 552b(c)(8), 12 C.F.R. § 4.16(b)(8), 4.18(a). Thus, the Bank's concern of exposure for unauthorized divulgence of its customer's records is protected under federal law but may not be under state law.

pending in at least one federal district court[5] and may be presented to other state and federal courts.[6] The issue of whether state agencies can examine into the affairs and records of national banks to enforce an observance of state laws is a fundamental issue requiring determination by this Court. The state supreme court's decision herein is potentially far reaching and may subject national banks for the first time to examination and enforcement activities by a plethora of other state and local officials. The impact of this Court's decision with respect to Congress' enactment of a comprehensive national banking system, with visitorial powers conferred upon the Comptroller of the Currency, will be substantial.

CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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[5] *Edgar F. Callahan, Director of Illinois Department of Financial Institutions v. First National Bank and Trust Company of Rockford*, No. 81C20151 (N.D. Ill., filed Oct. 29, 1981).

[6] The Minnesota Supreme Court's decision herein agrees with the conclusion expressed by another state court. *See, Clovis National Bank v. Calloway*, 69 N. Mex. 119, 364 P.2d 748 (1961).

Appendix

APPENDIX

No. Sp. Ramsey County Peterson, J.
Took not part,
Otis, J.

State of Minnesota, by Jim Lord,
its Treasurer,

Appellant,

81-311

vs.

The First National Bank of Saint Paul,
a national banking association,

Respondent.

Endorsed Filed December 17, 1981 John McCarthy, Clerk
Minnesota Supreme Court

SYLLABUS

The proposed examination of records of a national bank under Minn. Stat. § 345.53 (1980), which authorizes the state treasurer to examine the records of any holder of unclaimed property, is not an exercise of visitorial powers and is not preempted as to national banks under 12 U.S.C. § 484 (1976).

Reversed.

Heard, considered, and decided by the court en banc.

OPINION

PETERSON, Justice.

The issue for decision is whether Minn. Stat. § 345.53 (1980), which authorizes the state treasurer to examine the records of any holder of unclaimed property, is preempted as to national banks by virtue of 12 U.S.C. § 484 (1976), which

restricts visitorial powers over national banks. We hold that the power sought to be exercised by the treasurer is not the exercise of visitorial powers and is not preempted by the federal statute.

This is an action for declaratory and injunctive relief brought by Jim Lord, Treasurer of the State of Minnesota. He asserts authority under Minn. Stat. § 345.53 (1980) to examine the records of the First National Bank of St. Paul to determine if the bank has complied with the Minnesota Uniform Disposition of Unclaimed Property Act, Minn. Stat. §§ 345.31-.60 (1980). The bank's position is that the examination of national bank records is governed by 12 U.S.C. § 484 (1976), which, it is argued, permits examination only by the Comptroller of the Currency, a federal official with congressionally delegated powers. Agreeing with the bank's view of the preemptive effect of section 484, the district court granted the bank's motion for summary judgment and the treasurer now appeals.

The Minnesota Uniform Disposition of Unclaimed Property Act contains provisions regarding the disposition of property in the hands of "holders" that has remained unclaimed for a requisite number of years by its true owner. The act prescribes the circumstances under which property is presumed abandoned and requires holders of such property to report annually to the state treasurer. Minn. Stat. § 345.41 (1980). The treasurer then attempts to locate the owner by publishing notices. If these attempts are unsuccessful the property is to be delivered to the treasurer, who assumes custody and responsibility to subsequent claimants. Minn. Stat. §§ 345.42-.44 (1980).

Minn. Stat. § 345.53 (1980) confers enforcement authority upon the state treasurer, as follows:

> The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to sections 345.31 to 345.60.

The bank has refused to allow the treasurer to proceed to examine its records,[1] claiming the treasurer's authority under Minn. Stat. § 345.53 is preempted by 12 U.S.C. § 484 (1976):

> No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized.

A determination of preemption, to the exclusion of concurrent jurisdiction over the same subject matter, invokes a threefold analysis: (1) whether compliance with both the federal and state provisions is a physical impossibility; (2) whether preemption is express and unequivocal in the language of the federal statute; and (3) whether congressional preemptive intent is implicit in the overall scheme of federal and state regulation. *Gryc? v. Dayton-Hudson Corp.*, 297 N.W.2d 727, 735 (Minn.), *cert. denied*, —— U.S. ——, 101 S. Ct. 320 (1980). As a preface to our preemption analysis, the history

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[1] In the present action, the bank admits that it is a "banking organization" and a "holder" as defined in the state act. The bank has duly filed unclaimed property reports as required by the act. Following receipt of these reports, however, the treasurer notified the bank of his intention to conduct an examination of the bank's records. Although the bank does not concede that the treasurer had "reason to believe" it has failed to report unclaimed property, that is not an issue on appeal.

and purposes of the federal and state statutes in issue may be briefly stated.

The federal statute, 12 U.S.C. § 484 (1976), was originally enacted as part of the National Bank Act of 1864, ch. 106, 13 Stat. 99, and reenacted with modification in the Federal Reserve Act of 1913, ch. 6, 38 Stat. 251. Together with 12 U.S.C. § 481 (1976), the statute vests the Comptroller of the Currency with powers and duties for the administration of the national banking laws, the duty of supervising national banks, and the power to take possession of the assets of a national bank and to assume control of its operations. 7 *Michie on Banks and Banking* 22 (1980). The periodic examinations and reports required under the National Bank Act are "designed to insure prompt discovery of violations of the act and in that event prompt remedial action by the comptroller." *Id.* at 25, *Deitrick v. Greaney*, 309 U.S. 190, 195 (1940).

The state statute, Minn. Stat. § 345.53 (1980), establishes a procedure by which the state treasurer can determine whether to implement the enforcement provisions of the Uniform Disposition of Unclaimed Property Act. *See* Minn. Stat. §§ 345.54-.55 (1980). The purposes of the act are: (1) to protect the interests of the owners of unclaimed property; (2) to relieve holders of the annoyance, expenses, and liability of keeping such property; (3) to preclude multiple liability; and (4) to give the adopting state use of considerable sums of money which otherwise is windfall to holders. Annot., 98 A.L.R.2d 304, 309 (1964). The act is general in its application to all holders of unclaimed property but includes specific provisions directed toward property held respectively by banks, business associations, life insurance corporations, utilities, fiduciaries, and state courts, officers, and agencies. The state's

interest in unclaimed property has been recognized as a power "as old as the common law itself." *Anderson National Bank v. Luckett*, 321 U.S. 233, 251 (1944) (holding that the substantive provisions and reporting requirements of an unclaimed property law are valid as applied to national banks).

1. It is clear that compliance with both the federal and state provisions is not a physical impossibility, so there is no ground for preemption on that basis.

2. The dispositive issue in the court below was whether the limitation on visitorial powers constitutes an express preemption of the treasurer's examination. We hold that this is not a visitorial power and therefore reverse.

The idea of visitorial powers is derived from canon law and was, in the 18th century, applied to charitable corporations as part of the common law. *Continental-Midwest Corp. v. Hotel Sherman, Inc.*, 13 Ill. App. 2d 188, 141 N.E.2d 400 (1957). In that context it was defined as the exclusive right of the founder of a corporation to make by-laws for the corporation and to adjudge disputes arising thereunder. *Id.* at 192, 141 N.E.2d at 402. The visitor's power to adjudicate disputes ended with the by-laws; controversies under the general law were matters for the public courts. *Id.* It is now accepted that the state is visitor of all corporations. 19 C.J.S. *Corporations* § 986 (1940).

The most frequently cited definition of visitation was enunciated in *First National Bank of Youngstown v. Hughes*, 6 F. 737, 740 (Ohio 1881): "Visitation, in law, is the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and [to] enforce an observance of its laws and regulations. Burrill defines the word to mean 'inspection; superintendence; direction; regulation.'" The *Hughes* court ruled that an examina-

tion of national bank records by a county auditor, pursuant to state law, was not "visitation" where his purpose was to ascertain if there was money on deposit, subject to county taxation, that was not fully reported.

It is neither the fact of examination nor the extent of examination that determines whether a visitorial power is being exercised; rather, it is the purpose for which the examination is made that is determinative. *Id. See Guthrie v. Harkness*, 199 U.S. 148 (1905) (inspection of national bank records by shareholder to determine value of holdings and insure compliance with loan limitations is not visitation); *Bank of America National Trust and Savings Ass'n v. Douglas*, 70 U. S. App. D. C. 221, 105 F.2d 100 (1939) (SEC inspections of bank records to investigate possible violations of the Securities Act of 1934 is not visitorial). In 19 C.J.S. Corporations § 986 (1940) "visitation of corporations" is defined as "the act of examining into corporate affairs; * * * and the purpose of visitation is to supervise, direct, and control the management of the corporation" (footnote omitted).

More recently, the case law was reviewed and interpreted as showing that "under § 484 any inquiry into the operation of a bank is not automatically a 'visitorial power' which is prohibited." *Peoples Bank of Danville v. Williams*, 449 F. Supp. 254, 259 (W.D. Va. 1978). *Peoples Bank* involved bank examinations to enforce the antifraud provisions of the securities laws. The court isolated the issue as follows: "[P]laintiff's claim of visitation must stand or fall based upon an examination of what the SEC intends to do by its investigation into the formation of Peoples Bank of Danville." *Id.* The SEC investigations were held not to be visitorial because no effort was being made to control the bank. *Id.* at 260.

The only court to examine this question under identical facts concluded on the strength of *First National Bank of Youngstown v. Hughes*, 6 F. 737 (C.C.N.D. Ohio 1881) that examinations to enforce the Uniform Disposition of Unclaimed Property Act against national banks were not preempted. *Clovis National Bank v. Callaway*, 69 N.M. 119, 364 P.2d 748 (1961). If, as in *Hughes*, it is not illegal visitation to determine whether a bank has on deposit property which by virtue of the tax law creates a liability to the county, then it is analogically not impermissible visitation to determine whether a bank has on deposit property which by virtue of the unclaimed property law is deemed abandoned and should be turned over to the state.

The bank calls our attention to *National State Bank, Elizabeth, N.J. v. Long*, 630 F.2d 981 (3d Cir. 1980), in which the enforcement authority of a state official under a state antiredlining statute was held preempted by 12 U.S.C. § 484 (1976). We cannot agree with the *Long* court's discussion of visitorial powers and, to the extent that the decision was based on the circumstances of antiredlining legislation, we find *Long* distinguishable.

The bank also places emphasis on the regulations and informal opinions of the comptroller, interpreting his own authority to inspect national bank records as exclusive. These statements, being interpretive and not substantive, are not binding upon this court. *Chrysler Corp. v. Brown*, 441 U.S. 281, 315 (1979); *First National Bank of Milaca v. Smith*, 445 F. Supp. 1117, 1120-21 (D. Minn. 1977).

Having determined that the examination by the treasurer is not visitorial, we need not consider whether the examination would fall within the express exceptions in 12 U.S.C. § 484

(1976) for visitorial powers "authorized by law, or vested in the courts of justice."

3. We further conclude there was no implied intent by Congress to bar the proposed examination by the state treasurer. No preemptive intent is inferred from either the federal statute or its legislative history. The nature of the subject matter regulated does not demand a uniformity made possible only through exclusive federal regulation. On the contrary, the Federal Reserve Act manifests an intent to place national banks on an equal, competitive basis with state banks and trust companies under the laws of the state in which the national bank is situated. *Boatman's National Bank of St. Louis v. Hughes,* 385 Ill. 431, 53 N.E.2d 403 (1944). The bank has presented no persuasive evidence or arguments that preemption is implied by the pervasiveness of the federal regulatory scheme.

We must consider in greater detail the claim that the state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. This inquiry has been alternatively phrased, in the context of national banking laws, as whether the state law "frustrates the purpose for which national banks were created" or "impairs their efficiency to discharge the duties imposed upon them by federal law." *National State Bank, Elizabeth, N.J. v. Long,* 630 F.2d at 987.

The potential evils of the treasurer's examination would amount at most to an occasional inconvenience. The focus of the examination is on a small percentage of the bank's accounts. Although other records and documents will be scanned to locate the dormant accounts, we recognize that the banking industry employs sophisticated data processing technologies that will facilitate this search.

The bank raises a related objection that examination by a state official constitutes a "duplication of effort." This, without more, is not an adequate ground for preemption. *Peoples Bank of Danville v. Williams*, 449 F. Supp. at 259. *Cf. Bank of America National Trust and Savings Ass'n v. Douglas*, 70 U. S. App. D. C. at 227, 105 F.2d at 106 (suggesting that national banks should not be put in a class by themselves with regard to a particular law simply because enforcement of that law necessarily involves inspection of records already examined by the comptroller). It should be noted that the principal purposes of the comptroller's inspections are (1) to ascertain the financial condition and soundness of management of national banks, (2) to determine whether or not such banks are operating in conformity with the *banking laws*, and (3) to enable him to recommend amendments to existing law. *Id.* at 225, 105 F.2d at 104 (quoting 20 Op. Att'y. Gen. 555, 560 (1912)). We have not been directed to a single instance in which the comptroller has detected and reported violations of state unclaimed property laws.[2] Nor is it the case that this is one of numerous state regulatory schemes requiring national banks to open their records to state examiners.

We find no support for the contention that confidentiality of bank records would be endangered by state inspection. Confidentiality of national bank records is not mandated by law. *Id.* While public confidence in national banks is enhanced by confidentiality, courts have in the past relied upon the assurances of investigators not to make reports public, *id.* at 226, 105 F.2d at 105, and have dismissed the fear of improper use of the knowledge obtained where nothing in the record sug-

[2] A state examiner has a stronger motivation to insure enforcement of state law than does a federal examiner faced with national concerns and a limited budget. *Cf. Jackson v. First National Bank of Valdosta*, 349 F.2d 71, 75 n.1 (5th Cir. 1965).

gested other than lawful purposes. *Guthrie v. Harkness*, 199 U.S. at 155. And even if fears of lessened public confidence are assumed well-founded, it has been held that the private rights of a national bank must, in an analogous situation, yield to public necessities. *First National Bank of Youngstown v. Hughes*, 6 F. at 741.

The State of Minnesota has a proper interest in the enforcement of its laws, particularly in a field of traditional state interest. The cases have consistently held that, where state substantive law is valid as applied to national banks, the banks may be required to file reports with the state. *Anderson National Bank v. Luckett*, 321 U.S. at 252-53 (reporting obligations are an "appropriate incident" to the state's authority over abandoned accounts); *Roth v. Delano*, 338 U.S. 226, 230 (1949) (such reports are similar to reports to state taxation authorities and disclosure by national bank officials is "but a decent comity between governments").

We do not find the line which the bank attempts to draw between reporting requirements and state inspection to be compelling. As the New Mexico Supreme Court reasoned, "[w]ith the right to obtain the information there must be a means of enforcing valid demands." *Clovis National Bank v. Callaway*, 69 N.M. at 131, 364 P.2d at 756. *See also Bowles v. Shawano National Bank*, 151 F.2d 749, 751 (7th Cir. 1945), *cert. denied*, 327 U.S. 781 (1946) ("[The Administrator of the Office of Price Administration] can not intelligently make charges without knowing facts to substantiate them. * * * How is the Administrator to unearth such violations or to confirm information given him by aggrieved persons or alert loyal citizens? By investigation and checking, of course.")

The better rule is that, while the state may not erect obstacles for a national bank in the discharge of the bank's duty,

"the line which limits its duty must also limit its freedom from accountability to state authority." 7 *Michie on Banks and Banking* 13 (1980) (footnote omitted).

Our holding in this case does not leave the bank powerless against abuse of examination procedures. It is within the power of the district court to issue a protective order to prevent demonstrable undue interference or public disclosure that goes beyond the objectives of the unclaimed property law.

Reversed.

MR. JUSTICE OTIS took no part in the consideration or decision of this case.

STATE OF MINNESOTA — DISTRICT COURT
County of Ramsey — Second Judicial District

File No. 444402

STATE OF MINNESOTA, BY JIM LORD,
ITS TREASURER,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF ST. PAUL,
A NATIONAL BANKING ASSOCIATION,

Defendant.

ORDER GRANTING SUMMARY JUDGMENT

This matter was heard by the undersigned Judge of the District Court on November 3, 1980, on plaintiff's and defendant's cross motions for summary judgment.

Ms. Jane Prohaska, Special Assistant Attorney General, 515 Transportation Building, Saint Paul, Minnesota 55155, appeared on behalf of the State. Mr. Frank Hammond and Mr.

Alan H. Maclin, from the firm of Briggs and Morgan, W-2200 First National Bank Building, Saint Paul, Minnesota 55101, appeared on behalf of defendant.

The court having heard the arguments of counsel, and upon the briefs, files and records herein,

IT IS ORDERED:

1. That the plaintiff's motion for summary judgment is in all respects denied.

2. That the defendant's motion for summary judgment is in all respects granted.

The following Memorandum is made a part of this Order.

CHARLES A. FLINN, JR.
Judge of District Court

Dated: This 14th day of January, 1981.

MEMORANDUM

Plaintiff, State of Minnesota by Jim Lord, its Treasurer, seeks declaratory and injunctive relief against the First National Bank of St. Paul, the defendant, to enforce Minn. Stat. 345.31 et-se (1978), The Minnesota Uniform Disposition of Unclaimed Property Act. This matter came to this court on the parties cross motions for summary judgment.

The state seeks to examine the bank's records to determine if the bank has complied with the state's unclaimed property laws under the legislative authority set forth in Minn. Stat. 345.53 which allows:

> The State Treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to sections 345.31 to 345.60.

The defendant bank argues that Minn. Stat. 345.53 is preempted by 12 U.S.C. § 484, which reads as follows:

> No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized.

Defendant bank claims that 12 U.S.C. § 484 totally occupies the field of visitorial powers and therefore the examination authorized by Minn. Stat. 345.53 is preempted and unenforceable.

The bank further claims that, even if 12 U.S.C. § 484 does not totally occupy the field of visitorial powers, Minn. Stat. 345.53 is inapplicable to national banks because it conflicts with federal law, that is, 12 U.S.C. § 484.

It is the state's position that § 484 does not preempt Minn. Stat. 345.53 because what the state seeks to do in this case is not an exercise of "visitorial powers".

It should be noted that there is no dispute as to the substantive provisions of the Minnesota Uniform Disposition of Unclaimed Property Act. The bank agrees that it is governed by the reporting requirements of the Act. The only issue presented is whether the state can enforce the substantive provisions of the Act by the authority in 345.53 where federal law confers upon the Comptroller of Currency the exclusive right of "visitation". It should also be noted that the Comptroller of Currency is required to report violations of state law revealed during their examinations.

The first questions that must be answered is whether 12 U.S.C. § 484 relating to visitorial powers preempts state law in that field. To find that federal law preempts state regula-

tion in that field, it must be determined that Congress intended preemption. Congressional intent must be based on "an unambiguous congressional mandate to that effect". *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 139, 147 (1963). The Court in *Florida Lime & Avocado Growers, Inc.* set out two ways in which "an unambiguous congressional mandate" could be found. It may be found: 1) If Congress has "unmistakably . . . ordained" preemption; or 2) if the nature of the regulated subject matter permits no other conclusion but preemption. 373 U.S. at 142.

The language in 12 U.S.C. § 484 which states "No bank shall be subject to any visitorial powers . . ." indicates that Congress has "unmistakably ordained" preemption. 12 U.S.C. § 484 indicates an "unambiguous congressional mandate" to the effect that visitorial powers shall be limited to those authorized therein.

The ultimate question in this case is whether the state is attempting to exercise "visitorial powers" through the use of Minn. Stat. 345.53. For the reasons set forth below, this court finds that the state, in investigating possible violations of its Unclaimed Property Act at defendant bank, is attempting to exercise "visitorial powers".

The definition of a "visitation" under 12 U.S.C. § 484, adopted by the United States Supreme Court in *Guthrie v. Harkness*, 199 U.S. 148 (1905), was first set out in *First National Bank of Youngstown v. Hughes*, 6 F. 737 (N.D. Ohio, 1881). The court in *Hughes* construed visitation to encompass management of the bank's affairs. The court in *Hughes* stated:

> Visitation, in law, is the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce an obser-

vance of its law and regulation. Burrill defines the word to mean "inspection; superintendence; direction; regulation."

In *Hughes*, the court found that there was no "visitation" where a county auditor ordered the cashier of a national bank to appear with certain bank records and given testimony which related to possible violations of state law on taxation of money on deposit. In *Guthrie v. Harkness, supra*, the court held there was no "visitation" where a shareholder of the bank sought to inspect the records of the bank to protect his shareholder rights. In both *Hughes* and *Guthrie*, the inspections concerned individual rights and/or duties. There was no attempt to enforce an observance of laws or regulations or how the bank does business. In the present case, one governmental agency seeks to inspect records already being examined by another agency. Both will be looking for identical violations. To hold that such a situation does not constitute an encroachment on the exclusive visitorial powers vested in the Comptroller does not seem reasonable.

The State's reliance on *Peoples Bank of Danville v. Williams*, 449 F. Supp. 254 (1978) is misplaced. In that case the court held that SEC subpoenas directed at the bank's books and records to investigate for possible violations of the antifraud sections of the Securities and Exchange Act was not a prohibited visitation. The court pointed out:

> . . . The sole governmental agency charged with enforcing the antifraud sections against banks is the SEC. Although federal banking officials hold concurrent jurisdiction to enforce *some* of the securities laws, they cannot enforce these antifraud sections. (Emphasis added)
> 449 F. Supp. at 260.

In the case before the court, the Comptroller is charged with enforcing the state's unclaimed property laws.

The case of *The National State Bank, Elizabeth, N. J. v. Long*, Nos. 79-1823 and 79-1824 (3rd Circuit, Sept. 17, 1980) is conceptually similar to the present case and provides the most persuasive authority for holding that the state here is seeking to exercise visitorial power. In *Long*, the court held that the New Jersey antiredlining statute governing national banks in New Jersey was substantively applicable to the bank there involved, but that it's enforcement provision was invalid because it encroached on the exclusive authority and responsibility delegated to the Comptroller of the Currency via 12 U.S.C. § 484.

The present case is similar to *Long* in that the Minnesota Unclaimed Property Law is clearly applicable to the national banks in Minnesota in substance. Because the Comptroller of Currency has the exclusive right to examine the bank's records and report violations of state unclaimed property law there would be a conflict with this exclusive authority if the state were allowed to duplicate the comptroller's examination.

CAF

STATE OF MINNESOTA
IN SUPREME COURT

No. 81-311

STATE OF MINNESOTA, BY JIM LORD,
ITS TREASURER,

Appellee,

vs.

THE FIRST NATIONAL BANK OF SAINT PAUL,
A NATIONAL BANKING ASSOCIATION,

Appellant.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that The First National Bank of Saint Paul, a national banking association, the appellant above-named, hereby appeals to the Supreme Court of the United States from the Order of the Supreme Court of the State of Minnesota, dated December 17, 1981, reversing the Order of the district court, which granted appellant's motion for summary judgment.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

BRIGGS AND MORGAN
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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

COURT FILE NO. CIV 3-80-360

STATE OF MINNESOTA, BY JIM LORD,
ITS TREASURER,

Plaintiff,

vs.

THE FIRST NATIONAL BANK OF SAINT PAUL,
A NATIONAL BANKING ASSOCIATION,

Defendant.

AFFIDAVIT

City of Washington
District of Columbia—ss.

Edmund G. Zito, being duly sworn, deposes and says:

1. I am the Chief National Bank Examiner of the Office of the Comptroller of the Currency of the United States, having held this position since May 4, 1980. Prior to that time, I served as Assistant Chief National Bank Examiner. I have been employed by the Office of the Comptroller of the Currency since June 8, 1970.

2. I make this affidavit on the basis of personal knowledge and the official records of the Office of the Comptroller of the Currency.

3. The Office of the Comptroller of the Currency was established in 1863 and is a bureau of the United States Department of the Treasury. The Comptroller is charged with the supervision and regulation of all national banks, including The First National Bank of St. Paul. 12 U.S.C. §1, *et seq.* To

perform this task, the Comptroller's Office is required to examine "every national bank as often as the Comptroller of the Currency shall deem necessary." 12 U.S.C. §481, as amended by §709(a) of the Depository Institutions Deregulation and Monetary Control Act of 1980. The procedures for conducting these examinations, which are performed by national bank examiners and assistant national bank examiners employed by the Comptroller's Office, are set forth in the Comptroller's Handbook for National Bank Examiners ("Handbook").

4. The Comptroller's regulatory responsibility includes enforcing compliance with both federal and applicable state laws, such as the State of Minnesota's Uniform Disposition of Unclaimed Property Act. Section 301.1, *et seq.* of the Handbook sets forth procedures for examining for compliance with state unclaimed property laws. (A copy thereof is attached hereto as Appendix "A" for the Court's convenience.)

5. It is the express policy of the Comptroller of the Currency to include in the examination report provided a national bank's board of directors a citation of all violations of applicable law found during an examination, including violations of state law relating to unclaimed property, and to require the bank to correct these violations. (*See* Handbook, Section 600.1; a copy thereof is attached hereto as Appendix "B" for the Court's convenience.) The National Bank Act provides the Office of the Comptroller of the Currency with adequate administrative tools to ensure correction of any such detected violations. 12 U.S.C. §1818.

6. Since there is a specific provision in the National Bank Act granting the Comptroller exclusive visitorial powers over national banks (12 U.S.C. §484), it is the position of the Office of the Comptroller of the Currency that federal law has preempted the exercise of visitorial powers by state agencies act-

ing pursuant to state law. Accordingly, state authorities have no legal right to compel national banks to submit to examination for compliance with state laws, including unclaimed property laws, or to compel access to national bank books and records for the purposes of examining for or enforcing compliance with state laws, including unclaimed property laws. 12 C.F.R. §7.6025.

EDMUND G. ZITO
Chief National Bank Examiner

Subscribed and sworn to before me this 28th day of July, 1980. — Barbara A. Smith, Notary Public. Commission expires 12/14/81.

UNIFORM DISPOSITION OF UNCLAIMED PROPERTY ACT

345.31 DEFINITIONS AND USE OF TERMS.

Subdivision 1. As used in sections 345.31 to 345.60, unless the context otherwise requires, the terms defined in this section shall have the meanings ascribed to them.

Subd. 2. "Banking organization" means any bank, trust company, savings bank, safe deposit company or private banker engaged in business in this state.

Subd. 3. "Business association" means any corporation, joint stock company, business trust, partnership, cooperative, or any association for business purposes of two or more individuals.

Subd. 4. "Financial organization" means any savings and loan association, building and loan association, credit union, industrial loan and thrift company or investment company engaged in business in this state.

Subd. 5. "Holder" means any person in possession of property subject to sections 345.31 to 345.60 belonging to

another, or who is trustee in case of a trust, or is indebted to another on an obligation subject to sections 345.31 to 345.60.

Subd. 6. "Life insurance corporation" means any association or corporation, including a fraternal beneficiary association as defined in section 64A.02, transacting within this state the business of insurance on the lives of persons or insurance appertaining thereto, including, but not by way of limitation, endowments and annuities.

Subd. 7. "Owner means a depositor in case of a deposit, a beneficiary in case of a trust, a creditor, claimant or payee in case of other choses in action, or any person having a legal or equitable interest in property subject to sections 345.31 to 345.60 or his legal representative.

Subd. 8. "Person" means any individual, business association, government or political subdivision, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

Subd. 9. "Utility" means any person who owns or operates within this state, for public use, any plant, equipment, property, franchise or license for the transmission of communications or the production, storage, transmission, sale, delivery or furnishing of electricity, water, steam or gas.

History: 1969 c 725 s 1; 1977 c 137 s 1, 2

345.32 PROPERTY HELD BY BANKING OR FINANCIAL ORGANIZATIONS OR BY BUSINESS ASSOCIATIONS.

The following property held or owing by a banking or financial organization or by a business association is presumed abandoned:

(a) Any demand, savings or matured time deposit made in this state with a banking organization, together with any interest or dividend thereon, excluding contracted service charges which may be deducted for a period not to exceed one year, unless the owner has, within seven years:

(1) increased or decreased the amount of the deposit, or presented the passbook or other similar evidence of the deposit for the crediting of interest; or

(2) corresponded in writing with the banking organization concerning the deposit; or

(3) otherwise indicated an interest in the deposit as evidenced by a memorandum on file with the banking organization; or

(4) received tax reports or regular statements of the deposit by mail from the banking or financial organization regarding the deposit. Receipt of the statement by the owner should be presumed if the statement is mailed first class by the banking or financial organization and not returned; or

(5) acted as provided in paragraphs (1), (2), (3) and (4) of this subsection in regard to another demand, savings or time deposit made with the banking or financial organization.

(b) Any funds or dividends deposited or paid in this state toward the purchase of shares or other interest in a business association where the stock certificates or other evidence of interest in the business have not been issued, or in a financial organization, and any interest or dividends thereon, excluding contracted service charges which may be deducted for a period not to exceed one year, unless the owner has within seven years:

(1) increased or decreased the amount of the funds or deposit, or presented an appropritae record for the crediting of interest or dividends; or

(2) corresponded in writing with the financial organization concerning the funds or deposit; or

(3) otherwise indicated an interest in the funds or deposit as evidenced by a memorandum on file with the financial organization; or

(4) received tax reports or regular statements of the deposit or accounting by mail from the financial organization or business association regarding the deposit. Receipt of the statement by the owner should be presumed if the statement is mailed first class by the financial organization or business association and not returned.

(c) Any sum, excluding contracted service charges which may be deducted for a period not to exceed one year, payable on checks certified in this state or on written instruments issued in this state on which a banking or financial organization or business association is directly liable, including, by way of illustration but not of limitation, drafts, money orders and traveler's checks, that has been outstanding for more than seven years from the date it was payable, or from the date of its issuance if payable on demand, or, in the case of traveler's checks, has been outstanding for more than 15 years from the date of its issuance, unless the owner has within seven years, or within 15 years in the case of traveler's checks, corresponded in writing with the banking or financial organization or business association concerning it, or otherwise indicated an interest as evidenced by a memorandum on file with the banking or financial organization or business association.

(d) Any funds or other personal property, tangible or intangible, removed from a safe deposit box or any other safekeeping repository in this state on which the lease or rental period has expired due to nonpayment of rental charges

or other reason, that have been unclaimed by the owner for more than seven years from the date on which the lease or rental period expired.

(1) If the amount due for the use or rental of a safe deposit box has remained unpaid for a period of six months, the bank, savings bank, trust company, savings and loan, or safe deposit company shall, within 60 days of the expiration of that period, send by certified mail, addressed to the renter or lessee of the safe deposit box, directed to the address standing on its books, a written notice that, if the amount due for the use or rental of the safe deposit box is not paid within 60 days after the date of the mailing of the notice, it will cause the safe deposit box to be opened and its contents placed in one of its general safe deposit boxes.

(2) Upon the expiration of 60 days from the date of mailing the notice, and in default of payment within the 60 days of the amount due for the use or rental of the safe deposit box, the bank, savings bank, trust company, savings and loan, or safe deposit company, in the presence of its president, vice-president, secretary, treasurer, assistant secretary, assistant treasurer or superintendent, or such other person as specifically designated by its board of directors, and of a notary public not in its employ, shall cause the safe deposit box to be opened and the contents thereof, to be removed and sealed by the notary public in a package, upon which he shall mark the name of the renter or lessee and also the estimated value of the contents of the safe deposit box and, in the presence of one of the bank officers listed above, the notary public shall place the package in one of the bank's general safe deposit boxes and set out the proceedings in a certificate under his official seal, which shall be delivered to the bank, savings

bank, trust company, savings and loan, or safe deposit company.

(3) The bank, savings bank, trust company, savings and loan, or safe deposit company shall hold the contents of abandoned safe deposit boxes until they are claimed by the owner or the bank turns them over to the state treasurer pursuant to chapter 345.

History: 1969 c 725 s 2; 1977 c 137 s 3; 1978 c 674 s 60

345.33 UNCLAIMED FUNDS HELD BY LIFE INSURANCE CORPORATIONS.

(a) Unclaimed funds, as defined in this section, held and owing by a life insurance corporation shall be presumed abandoned if the last known address, according to the records of the corporation, of the person entitled to the funds is within this state. If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation.

(b) "Unclaimed funds," as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than seven years after the moneys became due and payable as established from the records of the corporation under any life or endowment insurance policy or annuity contract which has matured. A life insurance policy not matured by actual proof of the death of the insured is deemed to be matured and the proceeds thereof are deemed to be due and payable if such policy was in force when the insured attained the limiting age under the mortality table

on which the reserve is based, unless the person appearing entitled thereto has within the preceding seven years, (1) assigned, readjusted or paid premiums on the policy, or subjected the policy to loan, or (2) corresponded in writing with the life insurance corporation concerning the policy. Moneys or drafts otherwise payable according to the records of the corporation are deemed due and payable although the policy or contract has not been surrendered as required.

History: 1969 c 725 s 3; 1977 c 137 s 4

345.34 DEPOSITS HELD BY UTILITIES.

Any deposit held or owing by any utility made by a subscriber after January 1, 1960, to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, excluding any charges that may lawfully be withheld, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than seven years after the termination of the services for which the deposit or advance payment was made is presumed abandoned.

History: 1969 c 725 s 4

345.35 UNDISTRIBUTED DIVIDENDS AND DISTRIBUTIONS OF BUSINESS ASSOCIATIONS.

Any stock or other certificate of ownership, or any dividend, profit, distribution, interest, payment on principal, or other sum held or owing by a business association for or to a shareholder, certificate holder, member, bondholder, or other security holder, or a participating patron of a cooperative, who has not claimed it, or corresponded in writing with the business association concerning it, within seven years after the date prescribed for payment or delivery, is presumed abandoned if:

(a) It is held or owing by a business association organized under the laws of or created in this state; or

(b) It is held or owing by a business association doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate that the last known address of the person entitled thereto is in this state.

History: 1969 c 725 s 5; 1977 c 137 s 5

345.36 PROPERTY OF BUSINESS ASSOCIATIONS AND BANKING OR FINANCIAL ORGANIZATIONS HELD IN COURSE OF DISSOLUTION.

All intangible personal property distributable in the course of a voluntary dissolution of a business association, banking organization or financial organization organized under the laws of or created in this state, that is unclaimed by the owner within two years after the date for final distribution, is presumed abandoned.

History: 1969 c 725 s 6

345.37 PROPERTY HELD BY FIDUCIARIES.

All intangible personal property and any income or increment thereon, held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it becomes payable or distributable, increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary if:

(a) the property is held by a banking organization or a financial organization or by a business association organized under the laws of or created in this state; or

(b) it is held by a business association, doing business in this state, but not organized under the laws of or created in this state, and the records of the business association indicate

that the last known address of the person entitled thereto is in this state; or

(c) it is held in this state by any other person.

History: 1969 c 725 s 7; 1977 c 137 s 6

345.38 PROPERTY HELD BY STATE COURTS AND PUBLIC OFFICERS AND AGENCIES.

Subdivision 1. All intangible personal property held for the owner by any court, public corporation, public authority or public officer of this state, or a political subdivision thereof, that has remained unclaimed by the owner for more than seven years is presumed abandoned except as provided in section 524.3-914.

Subd. 2. This section shall not apply to property held for persons while residing in public correctional or other institutions. As to such persons, said property shall be presumed abandoned if it has remained unclaimed by the owner for more than seven years after such residence ceases.

Subd. 3. All intangible personal property held for the owner by any government or political subdivision or agency, that has remained unclaimed by the owner for more than seven years is presumed abandoned and is reportable pursuant to section 345.41, if:

(a) The last known address as shown on the records of the holder of the apparent owner is in this state; or

(b) no address of the apparent owner appears on the records of the holder; and

(1) the last known address of the apparent owner is in this state; or

(2) the holder is domiciled in this state and has not previously transferred the property to the state of the last known address of the apparent owner.

History: 1969 c 725 s 8; 1976 c 239 s 106; 1978 c 664 s 1

345.39 MISCELLANEOUS PERSONAL PROPERTY HELD FOR ANOTHER PERSON.

All intangible personal property, not otherwise covered by sections 345.31 to 345.60 including any income or increment thereon, but excluding any charges that may lawfully be withheld, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than seven years after it became payable or distributable is presumed abandoned. Property covered by this section includes, but is not limited to (a) unclaimed wages or worker's compensation; (b) deposits or payments for repair or purchase of goods or services; (c) credit checks or memos, or customer overpayments; (d) unidentified remittances, unrefunded overcharges; (e) unpaid claims, unpaid accounts payable or unpaid commissions; (f) unpaid mineral proceeds, royalties or vendor checks; and (g) credit balances, accounts receivable and miscellaneous outstanding checks.

History: 1969 c 725 s 9; 1977 c 137 s 7

345.40 RECIPROCITY FOR PROPERTY PRESUMED ABANDONED OR ESCHEATED UNDER THE LAWS OF ANOTHER STATE.

If specific property which is subject to the provisions of sections 345.32, 345.35, 345.36, 345.37 and 345.39 is held for or owed or distributable to an owner whose last known address is in another state by a holder who is subjected to the jurisdiction of that state, the specific property is not presumed abandoned in this state and subject to sections 345.31 to 345.60 if:

(a) it may be validly claimed as abandoned or escheated under the laws of such other state; and

(b) the laws of such other state make reciprocal provision that similar specific property is not presumed abandoned or escheatable by such other state when held for or owed or dis-

tributable to an owner whose last known address is within this state by a holder who is subject to the jurisdiction of this state.

History: 1969 c 725 s 10

345.41 REPORT OF ABANDONED PROPERTY.

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under sections 345.31 to 345.60 shall report annually to the state treasurer with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of $10 or more presumed abandoned under sections 345.31 to 345.60;

(2) in case of unclaimed funds of life insurance corporations, the full name of the policyholder, insured or annuitant and his last known address according to the life insurance corporation's records;

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under $10 each may be reported in aggregate;

(4) the date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) other information which the state treasurer prescribes by rule as necessary for the administration of sections 345.31 to 345.60.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while

holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before May 1 of each year as of December 31 next preceding. The state treasurer may postpone the reporting date upon written request by any person required to file a report.

(e) If the holder of property presumed abandoned under sections 345.31 to 345.60 knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall, before filing the annual report, inform the owner of the steps necessary to prevent abandonment from being presumed.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer, and if made by a public corporation, by its chief fiscal officer.

(g) Holders of property described in section 345.32 shall not impose any charges against property which is described in section 345.32, clauses (a), (b) or (c).

(h) Any person who has possession of property which he has reason to believe will be reportable in the future as unclaimed property may, with the permission of the state treasurer, report and deliver such property prior to the date required for reporting in accordance with this section.

History: 1969 c 725 s 11; 1977 c 137 s 8

345.42 NOTICE AND PUBLICATION OF LISTS OF ABANDONED PROPERTY.

Subdivision 1. Within 120 days from the filing of the report required by section 345.41, the state treasurer shall cause notice to be published at least once each week for two succes-

sive weeks in an English language newspaper of general circulation in the county in this state in which is located the last known address of any person to be named in the notice. If no address is listed or if the address is outside this state, the notice shall be published in the county in which the holder of the abandoned property has his principal place of business within this state.

Subd. 2. The published notice shall be entitled "notice of names of persons appearing to be owners of abandoned property," and shall contain:

(a) the names in alphabetical order and last known addresses, if any, of persons listed in the report and entitled to notice within the county as hereinbefore specified;

(b) a statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the state treasurer; and

(c) a statement that if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction within 65 days from the date of the second published notice, the abandoned property will be placed not later than 85 days after such publication date in the custody of the state treasurer to whom all further claims must thereafter be directed.

The state treasurer is not required to publish in such notice any item of less than $25 unless he deems such publication to be in the public interest.

Subd. 3. Within 120 days from the receipt of the report required by section 345.41, the state treasurer shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of $25 or more pre-

sumed abandoned under sections 345.31 to 345.60. Said notice shall contain:

(a) a statement that, according to a report filed with the state treasurer, property is being held to which the addressee appears entitled;

(b) the name and address of the person holding the property and any necessary information regarding changes of name and address of the holder; and

(c) a statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the state treasurer to whom all further claims must be directed.

Subd. 4. This section is not applicable to sums payable on traveler's checks or money orders presumed abandoned under section 345.32.

History: 1969 c 725 s 12

345.43 PAYMENT OR DELIVERY OF ABANDONED PROPERTY.

Subdivision 1. Every person who has filed a report under section 345.41, within 20 days after the time specified in section 345.42 for claiming the property from the holder, or in the case of sums payable on traveler's checks or money orders presumed abandoned under section 345.32 within 20 days after the filing of the report, shall pay or deliver to the state treasurer all abandoned property specified in the report, except that, if the owner establishes his right to receive the abandoned property to the satisfaction of the holder within the time specified in section 345.42, or if it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property, which will no longer be presumed abandoned, to the state treasurer, but in

lieu thereof shall file a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

Subd. 2. The state treasurer may in his discretion determine that the payment of abandoned property presents a hardship for a cooperative. If the state treasurer determines that a hardship exists, he may permit the cooperative to provide payment in equal installments over a period of three years.

(a) If legitimate claims to property reported by the cooperative to the state treasurer exceed the installments paid, the excess shall immediately be paid by the cooperative to the state treasurer and that amount shall be deducted from the subsequent installments.

(b) This subdivision shall apply only to abandoned property for which reports were filed within 12 months after July 1, 1977.

History: 1969 c 725 s 13; 1977 c 137 s 9

345.44 RELIEF FROM LIABILITY BY PAYMENT OR DELIVERY.

Upon the payment or delivery of abandoned property to the state treasurer, the state shall assume custody and shall be responsible for the safekeeping thereof and for payment of any claim successfully brought against any holder on account of any abandoned property paid or delivered to the state treasurer. Any person who pays or delivers abandoned property to the state treasurer under sections 345.31 to 345.60 is relieved of all liability to the extent of the value of the property so paid or delivered for any claim which then exists or which thereafter may arise or be made in respect to the property by any claimant, including any state. The state indemnifies and holds harmless such person as against any such claim and any loss and damage related thereto, provided that such person

shall notify the state treasurer of any legal proceedings against such person in relation to such claim within ten days after service of process upon such person and thus give the state an opportunity of defending such person in such proceeding. Any holder who has paid moneys to the state treasurer pursuant to sections 345.31 to 345.60 may make payment to any person reasonably appearing to such holder to be entitled thereto, and upon proof of such payment and proof that the payee reasonably appeared entitled thereto, the state treasurer shall forthwith reimburse the holder for the payment.

History: 1969 c 725 s 14

345.45 INCOME ACCRUING AFTER PAYMENT OR DELIVERY.

When property is paid or delivered to the state treasurer under sections 345.31 to 345.60, the owner is not entitled to receive income or other increments accruing thereafter.

History: 1969 c 725 s 15

345.46 PERIOD OF LIMITATION NOT A BAR.

The expiration of any period of time specified by statute or court order, during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property, shall not prevent the money or property from being presumed abandoned property, nor affect any duty to file a report required by sections 345.31 to 345.60 or to pay or deliver abandoned property to the state treasurer.

History: 1969 c 725 s 16

345.47 SALE OF ABANDONED PROPERTY.

Subdivision 1. Except as provided in subdivision 3, all abandoned property other than money delivered to the state treasurer under sections 345.31 to 345.60 shall within one year after the delivery be sold by him to the highest bidder at public sale in whatever city in the state affords in his judgment

the most favorable market for the property involved. The state treasurer may decline the highest bid and reoffer the property for sale if he considers the price bid insufficient. He need not offer any property for sale if, in his opinion, the probable cost of sale exceeds that value of the property.

Subd. 2. Any sale held under this section shall be preceded by a single publication of notice thereof, at least three weeks in advance of sale in an English language newspaper of general circulation in the county where the property is to be sold.

Subd. 3. Securities listed on an established stock exchange shall be sold at the prevailing prices on the exchange. Other securities may be sold over the counter at prevailing prices or, with prior approval of the state board of investment, by another method the state treasurer determines advisable. United States government savings bonds and United States war bonds shall be presented to the United States for payment.

Subd. 4. The purchaser at any sale conducted by the state treasurer pursuant to sections 345.31 to 345.60 shall receive title to the property purchased, free from all claims of the owner or prior holder thereof and of all persons claiming through or under them. The state treasurer shall execute all documents necessary to complete the transfer of title.

History: 1969 c 725 s 17; 1977 c 137 s 10

345.48 DEPOSIT OF FUNDS.

Subdivision 1. All funds received under sections 345.31 to 345.60, including the proceeds from the sale of abandoned property pursuant to section 345.47, shall forthwith be deposited by the state treasurer in the general fund of the state, except that he shall retain in a separate trust fund an amount not exceeding $25,000 from which he shall make prompt payment of claims duly allowed by him as hereinafter provided. Before making the deposit he shall record the name and last known

address of each person appearing from the holders' reports to be entitled to the abandoned property and of the name and last known address of each policyholder, insured person or annuitant, and with respect to each policy or contract listed in the report of a life insurance corporation, its number, the name of the corporation and the amount due. The record shall be available for public inspection at all resonable business hours.

Subd. 2. [Repealed, 1979 c 333 s 108]

History: 1969 c 399 s 1; 1969 c 725 s 18; 1976 c 331 s 41

345.49 CLAIM FOR ABANDONED PROPERTY PAID OR DELIVERED.

Any person claiming an interest in any property delivered to the state under sections 345.31 to 345.60 may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state treasurer.

History: 1969 c 725 s 19

345.50 DETERMINATION OF CLAIMS.

Subdivision 1. The state treasurer shall consider any claim filed under sections 345.31 to 345.60 and may hold a hearing and receive evidence concerning it. If a hearing is held, he shall prepare a finding and a decision in writing on each claim filed, stating the substance of any evidence heard by him and the reasons for his decision. The decision shall be a public record.

Subd. 2. If the claim is allowed, the state treasurer shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges.

History: 1969 c 725 s 20

345.51 JUDICIAL ACTION UPON DETERMINATIONS.

Any person aggrieved by a decision of the state treasurer or as to whose claim the state treasurer has failed to act with-

in 90 days after the filing of the claim, may commence an action in the district court to establish his claim. The proceeding shall be brought within 90 days after the decision of the state treasurer or within 180 days from the filing of the claim if the state treasurer fails to act. The action shall be tried de novo without a jury.

History: 1969 c 725 s 21

345.515 AGREEMENTS TO LOCATE REPORTED PROPERTY.

It is unlawful for a person to seek or receive from another person or contract with a person for a fee or compensation for locating property which he knows has been reported or paid or delivered to the state treasurer pursuant to chapter 345 prior to seven months after the date of delivery of the property by the holder to the state treasurer as required by section 345.43.

No agreement entered into after seven months from the date of delivery of the property by the holder to the state treasurer is valid if a person thereby undertakes to locate property included in a report for a fee or other compensation exceeding ten percent of the value of the recoverable property unless the agreement is in writing and signed by the owner and discloses the nature and value of the property and the name and address of the holder thereof as such facts have been reported. Nothing in this section shall be construed to prevent an owner from asserting at any time that an agreement to locate property is based upon an excessive or unjust consideration.

History: 1977 c. 137 s 11

345.52 ELECTION TO TAKE PAYMENT OR DELIVERY.

The state treasurer, after receiving reports of property deemed abandoned pursuant to sections 345.31 to 345.60, may decline to receive any property reported which he deems to

have a value less than the cost of giving notice and holding sale, or he may, if he deems it desirable because of the small sum involved, postpone taking possession until a sufficient sum accumulates. Unless the holder of the property is notified to the contrary within 120 days after filing the report required under section 345.41, the state treasurer shall be deemed to have elected to receive the custody of the property.

History: 1969 c 725 s 22

345.525 PROPERTY HAVING NO APPARENT COMMERCIAL VALUE.

Property delivered to the state treasurer pursuant to chapter 345 which has no apparent commercial value shall be made available for inspection by the Minnesota historical society to determine if the property has any historical value. If the society judges any property to be of historical value, the state treasurer shall turn the property over to the society for safekeeping. If it is determined that property delivered to the state treasurer has no commercial or historical value he may thereafter destroy or otherwise dispose of the property, and in that event no action or proceeding shall be brought or maintained against the state or any officer thereof or against the holder for or on account of any action taken by the state treasurer pursuant to chapter 345 with respect to the property. The state treasurer shall keep a record of all items destroyed under this section including the name and address of the owner of the property and the person who delivered the property to him, the date of delivery, a description of the property destroyed and the state of destruction.

History: 1977 c 137 s 12

345.53 EXAMINATION OF RECORDS.

The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property

that should have been reported pursuant to sections 345.31 to 345.60.

History: 1969 c 725 s 23

345.54 PROCEEDING TO COMPEL DELIVERY OF ABANDONED PROPERTY.

If any person refuses to deliver property to the state treasurer as required under sections 345.31 to 345.60, or pay the interest provided for by section 345.55, subdivision 3, the state treasurer may bring an action in a court of appropriate jurisdiction to enforce such delivery or payment.

History: 1969 c 725 s 24; 1978 c 664 s 2

345.55 PENALTIES.

Subdivision 1. Any person who willfully fails to render any report or perform other duties required under sections 345.31 to 345.60, shall be guilty of a misdemeanor.

Subd. 2. Any person who willfully refuses to pay or deliver abandoned property to the state treasurer as required under sections 345.31 to 345.60 shall be guilty of a gross misdemeanor.

Subd. 3. In addition to any damages, penalties, or fines for which a person may be liable under other provisions of law, any person who fails to pay or deliver unclaimed property within the time prescribed by this chapter after written demand therefor by the state treasurer made after March 29, 1978, shall pay to the state treasurer interest at the rate of 12 percent per annum on the property or value thereof from the date of the written demand.

History: 1969 c 725 s 25; 1978 c 664 s 3

345.56 RULES AND REGULATIONS.

The state treasurer is hereby authorized to make necessary rules and regulations to carry out the provisions of sections 345.31 to 345.60.

History: 1969 c 725 s 26

345.57 EFFECT OF LAWS OF OTHER STATES.

Sections 345.31 to 345.60 shall not apply to any property that has been presumed abandoned or escheated under the laws of another state prior to July 1, 1969.

History: 1969 c 725 s 27

345.58 CUT OFF DATE.

Except as to property required to be reported pursuant to Minnesota Statutes 1967, Sections 48.521 to 48.528, sections 345.31 to 345.60 shall not apply to property otherwise subject to sections 345.31 to 345.60 which became due or payable or which was in the possession of the holder before January 1, 1944.

History: 1969 c 725 s 28

345.59 UNIFORMITY OF INTERPRETATION.

Sections 345.31 to 345.60 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1969 c 725 s 30

345.60 CITATION.

Sections 345.31 to 345.60 as enacted and hereafter amended, may be cited as the uniform disposition of unclaimed property act.

History: 1969 c 725 s 31

12 C.F.R. § 7.6025(b) Visitorial Powers

The exercise of visitorial powers over national banks is vested in the Comptroller of the Currency. See 12 U.S.C. 484. Other officials, including state banking officials, have no authority to conduct examinations or to inspect or require the production of books or records of national banks, except as authorized by law. Federal law provides special procedures for verifying payroll records for unemployment compensation purposes (26 U.S.C. 3305[c]), for enforcing the Fair Labor Standards Act (29 U.S.C. 211), and for ascertaining the correctness of Federal tax returns within the purview of 26 U.S.C. 7602.

Motion to Dismiss or Affirm

Supreme Court, U.S.
FILED
APR 19 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1738

IN THE

Supreme Court of the United States

October Term, 1981

THE FIRST NATIONAL BANK OF ST. PAUL,
Appellant,

vs.

STATE OF MINNESOTA,
BY JIM LORD, ITS TREASURER,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MINNESOTA

MOTION TO DISMISS

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QUESTION PRESENTED

Is the State of Minnesota precluded by 12 U.S.C. § 484 (1978) from performing a limited examination of the records of a national bank for the sole purpose of verifying the bank's reports of unclaimed property in its possession where the State Treasurer has reason to believe that the bank has failed to report such property as required by the Minnesota Uniform Disposition of Unclaimed Property Act, Minn. Stat. §§ 345.31-.60 (1980)?

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No. 81-1738

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STATE OF MINNESOTA,
BY JIM LORD, ITS TREASURER,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MINNESOTA

MOTION TO DISMISS

The appellee State of Minnesota moves the Court to dismiss the appeal herein on the ground that the question on which the decision of the cause depends is so insubstantial as not to need further argument.

STATEMENT OF THE CASE

This appeal raises the question of the validity of the examination provision of the Minnesota Uniform Disposition of Unclaimed Property Act, Minn. Stat. §§ 345.31-.60 (1980) (hereinafter the "Unclaimed Property Act"). The Unclaimed Property Act contains comprehensive provisions regarding the disposition of property which has remained unclaimed for a requisite number of years by its true owner. Essentially, the Act establishes a simplified method whereby the State may take possession of abandoned property, holding it until the rightful owner claims it.

The Act applies to numerous types of property in the possession of various types of organizations or entities. For each type of property and holder, the Act prescribes the circumstances in which the property is presumed abandoned. See Minn. Stat. §§ 345.32-.39 (1980). For example, a savings deposit with a bank is presumed abandoned if the owner has had no contact with the bank for seven years. Minn. Stat. § 345.32(a) (1980).

Under the Act, the initial responsibility to report unclaimed property falls upon the person or organization in possession of that property. That is, every person holding property presumed to be abandoned is required to report that property annually to the State Treasurer. Minn. Stat. § 345.41 (1980). The Treasurer's Office then attempts to locate the owners of the unclaimed property by mailing notices to their last known addresses and by publishing notices regarding the unclaimed property in local newspapers. Minn. Stat. § 345.42 (1980). If the true owner of the unclaimed property does not appear to reclaim the property as a result of these notices, the holder of the property is required to deliver the property to the State

Treasurer. Minn. Stat. § 345.43 (1980). The State Treasurer then assumes custody and responsibility for the unclaimed property in the event that the owner later appears to reclaim it. Minn. Stat. § 345.44 (1980).

In order to determine whether the holders of unclaimed property have in fact complied with the provisions of the Act, the State Treasurer has been given statutory authority to examine the records of persons he has reason to believe have failed to make proper reports. That authority is set forth in Minn. Stat. § 345.53 (1980), which reads as follows:

> The state treasurer may at reasonable times and upon reasonable notice examine the records of any person if he has reason to believe that such person has failed to report property that should have been reported pursuant to sections 345.31 to 345.60.

It is the application of this provision to national banks that is challenged here.

The First National Bank of Saint Paul ("Bank") admits that it is a "banking organization" within the meaning of Minn. Stat. § 345.31, subd. 2 (1980) and a "holder" within the meaning of Minn. Stat. § 345.31, subd. 5 (1980). As a "banking organization," the Bank is required by Minn. Stat. § 345.32 (1980) to report and deliver to the State Treasurer all savings and checking accounts from which there have been no withdrawals or to which there have been no deposits for seven years, unless the whereabouts of the owner is otherwise confirmed by Bank records. Additionally, banking organizations are required to report cashier's checks, money orders, certified checks and other instruments which have remained uncashed for seven years since the date of issuance. Minn. Stat. § 345.32 (1980).

In fact, the Bank has filed unclaimed property reports with the State Treasurer's Office. Based on its review of those reports, the Treasurer's Office developed reason to believe that the Bank had failed to make a complete reporting of the unclaimed property it held.[1] The Treasurer's Office then notified the Bank of its intention to examine the Bank's records pursuant to Minn. Stat. § 345.53 (1980). The examination sought by the Treasurer's Office was not an all-encompassing review of the entirety of the Bank's records. Rather, the Treasurer's Office sought to examine only those records necessary to verify the accuracy and completeness of the Bank's unclaimed property reports.

After an abortive attempt to examine and unsuccessful subsequent negotiations with the Bank, the State, by its Treasurer Jim Lord, instituted an action for declaratory and injunctive relief in the state district court. The State sought an order declaring its right to examine the Bank's records pursuant to Minn. Stat. § 345.53 (1980). The district court granted summary judgment in favor of the Bank, ruling that the examination would constitute the exercise by the State of visitorial powers in contravention of 12 U.S.C. § 484. The Minnesota Supreme Court reversed and this appeal followed.

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[1] The Bank has denied that the Treasurer has reason to believe that it has failed to report property that should have been reported. However, resolution of that issue is not necessary for adjudication of the Bank's preemption claim and has not yet been litigated. Despite the necessity of further state court proceedings to determine that issue, it is assumed that this appeal satisfies the "finality" requirement of 28 U.S.C. § 1257 (1978). Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 481 (1975); North Dakota Pharmacy Board v. Snyder's Stores, 414 U.S. 156, 162-64 (1973).

ARGUMENT

This appeal presents no substantial federal question that warrants further argument. The sole issue is whether federal law preempts the State of Minnesota from authorizing its Treasurer to make a limited examination of the records of a national bank in order to determine if the bank's unclaimed property reports were complete and accurate.

This Court has already established, and the Bank necessarily concedes, that national banks are subject to state unclaimed property laws. *Anderson National Bank v. Luckett*, 321 U.S. 233 (1944). Furthermore, this Court has determined that national banks are subject to the reporting requirements of those laws. *Id.* at 252-53. The Bank does not dispute this. Thus, the issue that remains and is presented here is a narrow one: Is the state preempted from conducting a limited review of a national bank's records to determine the accuracy of the unclaimed property reports that the state is authorized to require? Given the established holdings that the state is not preempted from requiring a national bank to surrender presumptively abandoned accounts and is not preempted from requiring the bank to report unclaimed property, it is difficult to see how this question can be characterized as anything but insubstantial. The decision of the Minnesota Supreme Court, which is reprinted in the appendix to the Jurisdictional Statement at A-1 through A-11, contains a thorough and accurate analysis of the issue and is plainly correct. The Bank's argu-

ment to the contrary in its Jurisdictional Statement is wholly deficient and its appeal should be dismissed.[2]

For example, the Bank argues that national banks operate independent of state law unless Congress has provided otherwise. Jurisdictional Statement at 6. On the contrary, the general rule is that national banks are subject to state laws except in certain specifically-defined circumstances. *First National Bank v. State of Missouri*, 263 U.S. 640, 656 (1924). State laws are inapplicable to national banks only where the state law: a) expressly conflicts with the laws of the United States, or b) either frustrates the purposes for which the bank was created or impairs its efficient discharge of the duties imposed by federal law. *Id.* The Minnesota Supreme Court correctly and conclusively demonstrated that those circumstances do not exist with respect to the state law challenged here.

The Bank's contention that the Unclaimed Property Act examination provision is preempted is based primarily on the argument that the state law authorizes the exercise of visitorial power over national banks contrary to the provisions of 12 U.S.C. § 484. Section 484 provides that:

> No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof or by any committee of Congress or of either House duly authorized.

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[2] The American Bankers Association ("Association") has filed an *amicus curiae* brief in this matter. Appellee consented to the filing of that brief on the condition that it would be received by April 9. However, it was not received until April 12, when appellee's motion to dismiss was ready to go to the printer. Appellee has, therefore, responded to the Association's brief only to the limited extent permitted by the obvious time constraints.

However, the Bank's central premise, that the examination at issue constitutes the exercise of visitorial power, is erroneous, as the court below determined. A-5 through A-7. Both in its historical and contemporary application, the phrase "visitorial power" connotes more than the limited type of examination sought by the State under its Unclaimed Property Act.[3]

As the court below explained, the origin of the concept of visitorial power was in the area of charitable corporations or trusts. The founder of such a corporation had authority to appoint a "visitor" to oversee the operation of the corporation to insure that its purposes were being served. *See, e.g., Dartmouth College v. Woodward,* 17 U.S. (4 Wheat.) 518, 672, 674 (1819). The historical concept of visitorial power envisioned pervasive controlling and regulating authority. The contrast between the limited purpose and scope of the examination authorized by Minn. Stat. § 345.53 (1980) and the historical concept of visitorial power is obvious.

More importantly, a consistent line of cases commencing in 1881, addressing the concept of visitorial power as used in section 484, establishes that the phrase means not the mere review of records for a limited purpose, but the overall superintendence and regulation of the bank. In each case the challenged examination did not involve an attempt to exercise general supervisory authority over the operations of the bank and was found not to violate section 484. *First National Bank of Youngstown v. Hughes,* 6 F. 737 (Cir. Ct. N.D. Ohio 1881) (examination by county auditor to verify depositors'

[3] Even if the examination were visitorial power, it would not be preempted because it falls within both the "authorized by law" and the "vested in the courts of justice" exceptions stated in section 484. Because the state Supreme Court determined that the examination at issue is not a visitation, it found it unnecessary to address the applicability of those two exceptions.

property tax returns); *Guthrie v. Harkness*, 199 U.S. 148 (1905) (examination by shareholder to determine value of investment); *Bank of America National Trust and Savings Ass'n v. Douglas*, 105 F.2d 100 (D.C. Cir. 1939) (SEC examination of bank in conjunction with investigation of corporate stockholder); *Peoples Bank of Danville v. Williams*, 449 F. Supp. 254 (W.D. Va. 1978) (SEC examination for fraud in formation of bank). See decision below at A-5 through A-7. Indeed, as the court below noted, the only case that has addressed the issue in this precise context holds that the examination authorized by a state unclaimed property act is not an exercise of visitorial power. *Clovis National Bank v. Calloway*, 69 N.M. 119, 364 P.2d 748 (1961).

The American Bankers Association seems to argue that an examination by someone claiming to be the "superior" of the bank in any sense constitutes a visitation. *Amicus* Brief at 10-13. The Association overlooks the fact that visitorial authority generally involves more than just some regulatory power; it is comprehensive authority to regulate the day-to-day operations of the corporation.

This distinction is clearly illustrated in *Peoples Bank of Danville v. Williams*, 449 F. Supp. 254 (W.D. Va. 1978). In that case the Securities and Exchange Commission sought to examine the books of a national bank in conjunction with its investigation of possible fraud in the formation of the bank. The bank asserted that the investigation constituted the exercise of visitorial power and was therefore precluded by 12 U.S.C. § 484. After reviewing previous cases regarding the meaning of "visitation" and the limitation thereon contained in section 484, the court reasoned:

> From these cases it becomes clear that under § 484 any inquiry into the operation of a bank is not automatically a "visitorial power" which is prohibited.

Id. at 259. The court concluded:

> The court thinks that the SEC inquiry is not a "visitorial power" within the understanding of § 484. . . . The SEC does not seek to control Peoples in any fashion, it only desires to investigate the possible securities violations. Such an investigation is not, by itself, a prohibited visitorial power.

Id. at 260. Obviously, the SEC was exercising "superior" authority over the bank. Nevertheless, because that authority was limited in scope, it was not visitorial. If the examination of a bank's records to determine if any securities fraud violations occurred in its formation does not constitute the exercise of visitorial power, it is difficult to conceive how the limited review necessary to verify unclaimed property reports can be so characterized.

Furthermore, the Association has incorrectly argued that if the treasurer is not acting in a superintending capacity, it is no different than the man in the street with respect to examination of the bank's records. *Amicus* Brief at 11. The Association overlooks the fact that in enforcing the Unclaimed Property Act, the state stands in the shoes of the depositors whose funds the bank holds. *See Roth v. Delano*, 338 U.S. 226, 230 (1949).

The reliance of both the Bank and the Association on *National State Bank v. Long*, 630 F.2d 981 (3d Cir. 1980), as a decision inconsistent with that of the Minnesota Supreme Court is misplaced. That case involved a challenge to the validity of applying the New Jersey anti-redlining law to national banks. To the extent that the court in *Long* did construe the term visitorial power to mean any examination of a bank, its ruling was contrary to existing authority and was wrong.

Moreover, the court in *Long* expressly pointed out that its conclusion regarding the exclusivity of the Comptroller's examination authority was tied to the specific circumstances of that case. *Id.* at 989. Indeed, while there are some superficial similarities between the instant case and *Long*, there are important and substantial differences.

For example, the state enforcement authority at issue in *Long* was more extensive than the limited examination power authorized by Minn. Stat. § 345.53. Specifically, the New Jersey anti-redlining law authorized the commissioner of the state Department of Banking to: a) require banks to compile and disclose information, b) hold hearings, and c) issue cease and desist orders. Thus, the Court in *Long* was dealing with a more extensive degree of state authority over national banks than is presented by this case.

In addition, the court in *Long* held that the *reporting* requirements of the New Jersey law were preempted by the federal Home Mortgage Disclosure Act, 12 U.S.C. §§ 2801-09 (1976). *Long*, 630 F.2d at 986. In contrast, as admitted by the Bank here, the reporting requirements of the Unclaimed Property Act are unquestionably applicable to national banks. *Anderson National Bank v. Luckett, supra.*

With respect to authority to enforce the anti-redlining provisions by such means as cease and desist orders, the court also found the state law preempted. Of course, the subject matter of the state law at issue in *Long* militated far more strongly in favor of preemption than does the regulation of unclaimed property. Specifically, the court in *Long* noted that "when state law prohibits the practice of redlining, its enforcement so directly implicates concerns in the banking field that the appropriate federal regulatory agency has jurisdiction." *Long*, 630 F.2d at 988. The court identified three federal acts that it

concluded were generally directed at the same practices that the state law dealt with. *See id.* at 988-89. In addition, the court found that enforcement of the anti-redlining law would require consideration of matters that "have some relationship to the bank's financial stability." *Id.* at 988.

However, the same considerations do not pertain in the instant case. Unlike the situation in *Long*, there is no federal statutory regulation that covers the unclaimed property area. Indeed, the area of disposition of unclaimed property is one that is generally left for state regulation under the concept of police power. *See United States v. Alabama*, 434 F. Supp. 64, 66, 67 (M.D. Ala. 1977). Furthermore, the scope of the examination sought is so limited that it neither "directly implicates concerns in the banking field" nor has any "relationship to the bank's financial stability." Finally, this Court has established that states do have the authority to enforce unclaimed property laws. *Anderson National Bank v. Luckett*, 321 U.S. 233, 252-53 (1944).[4] The *Long* case simply does not provide persuasive authority for the conclusion that the examination at issue here constitutes an exercise of visitorial power that is prohibited by section 484.

Similarly, the reliance of the Association on *Conference of Federal Savings and Loan Associations v. Stein*, 604 F.2d 1256 (9th Cir. 1979), *aff'd mem.*, 445 U.S. 921 (1980), ignores crucial differences in that case. First, that case involved preemption of a state anti-redlining statute. Thus, as in *Long*, the

[4] These critical differences between state unclaimed property laws and anti-redlining laws also negate the threat, posited by the Association in its brief at 6-9, that Minnesota Supreme Court's decision here will necessarily lead to state examination of national banks for anti-redlining violations. The same differences are also apparent with respect to the other state laws mentioned by the Association.

regulatory aspects of the state law would necessarily have involved state authorities in sensitive matters relating to the savings and loan association's financial stability which are not involved in the instant case. A further distinction is that even if state enforcement or regulatory authority is precluded with respect to the matters addressed in *Stein*, the *Luckett* case establishes that state enforcement authority is not preempted with respect to unclaimed property laws.

Moreover, *Stein* dealt with state regulation of federal savings and loan associations rather than national banks. Federal regulation of federal savings and loan associations is more pervasive than regulation of national banks, and state authority with respect to such associations is thus more limited. As the Court noted in the *Stein* case:

> Pursuant to its valid statutory authority, the federal home loan bank board has promulgated comprehensive regulations covering all aspects of every federal savings and loan association 'from its cradle to its corporate grave.'

Id. at 1260 (quoting from *Myers v. Beverly Hills Federal Savings & Loan Ass'n*, 499 F.2d 1145, 1147 (9th Cir. 1974)). The court in *Stein* was understandably and properly disinclined to allow any state regulation where federal authority had been exercised in such a pervasive manner. However, that is not the situation with respect to national banks.

The Bank's reliance on the interpretive ruling of the Comptroller is also unavailing. See Jurisdictional Statement at 9, A-42. First, to the extent that the Comptroller's ruling treats every examination of the books of a national bank as an exercise of visitorial power, it is plainly wrong. *See Peoples Bank of Danville v. Williams*, 449 F. Supp. at 259. In any event, an

interpretive ruling does not have the binding effect of law. *Chrysler Corp. v. Brown*, 441 U.S. 281, 315 (1979).

Furthermore, the claim that the Comptroller's Office examines national banks for violations of state unclaimed property laws is of little significance. First, as the court below recognized, the contention that duplication of effort provides a basis for preemption has been rejected. A-9. Moreover, although the Comptroller of the Currency claims that his examination of national banks provides for effective enforcement of the Unclaimed Property Act, that claim simply does not ring true, as evidenced by the attitude of the Comptroller's Office expressed in recent congressional hearings. *See Bank Treatment of Inactive Checking and Savings Accounts: Hearings Before a Subcommittee of the Committee on Government Operations of the House of Representatives*, 96th Cong., 2d Sess. 263-304 (July, 1980). In those hearings the representatives of the Comptroller's Office reiterated the claim that they would examine national banks for compliance with state unclaimed property laws. However, these assertions were fraught with qualifications concerning the limited resources available to the Comptroller's Office and the need to prioritize the apportionment of those limited resources.

For example, as one representative of the Comptroller's Office testified:

> The Comptroller's Office sets priorities for the allocation of examination time and supervisory attention in a way which seeks to assure that serious problems and potential problems receive greatest scrutiny. In the commercial area, the primary objective is to assure the safe and sound operation of the institution and compliance with national banking laws. In the consumer examination, most of our examination time is devoted to enforcing the

> equal credit laws, Truth-in-Lending, and the Community Reinvestment Act.
>
> The agency does examine all national banks for compliance with all applicable laws but *we allocate our limited resources to areas which are major problems or exhibit a significant level of consumer complaints.*
>
> * * *
>
> *We have not viewed dormant account practices as a major area of noncompliance by national banks.* Therefore, while the subject is covered in our examination program, it does not receive the emphasis that, for example, the capital adequacy of an institution would receive.

Id. at 264 (emphasis added). Obviously, examination for compliance with state unclaimed property laws is not a high priority function for the Comptroller's Office. In these circumstances, it cannot be reasonably assumed that the Minnesota Unclaimed Property Act will be vigorously or effectively enforced by the Comptroller of the Currency. *Cf. Jackson v. First National Bank of Valdosta*, 349 F.2d 71, 75 n.1 (5th Cir. 1965).

It should also be noted that if the proper state official is permitted to examine national banks for compliance with the state unclaimed property law, there will be no need for the Comptroller to do so. Thus, there would be no duplication of effort and the Comptroller would no longer even have to consider allocating any of his limited resources to that job.[5]

---

[5] The Association has relied on other Congressional testimony to argue that Congress is aware that states are precluded from examining national banks and has failed to take any action to change the situation. Because of the limited time available after receipt of the *Amicus* Brief, appellee has not had full opportunity to review this new argument. However, reliance on the inaction of Congress, which could result from innumerable reasons, seems questionable on its face.

Lastly, it is equally apparent that the Bank's argument that the examination by the state for compliance with the unclaimed property act will interfere with its proper functioning was properly rejected by the court below. See A-8 through A-10. Nor is there any basis on which to credit the claim that the regulatory authority of the Comptroller will be interfered with.

That examination by the State Treasurer would not unduly interfere with the authority of the Comptroller of the Currency is illustrated by the Comptroller's own policies. For example, although the Comptroller claims exclusive visitorial power over national banks, as noted above, he does not object to banks voluntarily submitting to examination by state authorities. *See, e.g.*, Comptroller Staff Interpretive Letter No. 93, April 2, 1979, [1978-79 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,168. Obviously, if state examination of a bank's records interfered with the Comptroller's duties, it would do so even if the bank consented to the examination.

Furthermore, in some circumstances the Comptroller has conceded that state examination of national bank records is necessary and appropriate. In a letter distributed to the presidents of all national banks and regional administrators as Banking Circular No. 59, the Comptroller of the Currency stated:

> This Office recognizes the practical necessity of state officials being able to inspect the records of national banks to the extent necessary to verify the accuracy of tax returns filed by the banks. Accordingly, we have taken the position that we have no objections to state officials examining records of national banks for the purpose of ascertaining payments of applicable taxes.

Banking Circular No. 59, December 9, 1974. Obviously, the Comptroller of the Currency perceives no undue interference with his functions by the state's examination of national bank records to verify their tax returns.

Significantly, this Court has noted the similarity between the reporting of unclaimed property and the reporting of property for taxation purposes. In *Roth v. Delano*, 338 U.S. 226 (1949), the Court reaffirmed its earlier ruling in *Anderson National Bank v. Luckett, supra*, that requiring a national bank to turn over its presumptively abandoned deposits to a state authority does not burden, obstruct or frustrate the bank in discharging its federal functions. The Court in *Roth* went on to state:

> We also held no interference with a bank's federal function to result from a mere requirement that it make a report to the state of unclaimed property, *any more than from a requirement that it report to the state tangible property therein for the purposes of taxation* . . . .

Id. at 230 (emphasis added). This Court has recognized the similarity between requiring a national bank to report to a state authority unclaimed property and property subject to taxation. The Comptroller of the Currency acknowledged in Banking Circular No. 59 the appropriateness of state examination of national bank records to verify national bank tax returns. It follows that state examination of national bank records for the purpose of verifying unclaimed property reports is equally appropriate and cannot constitute undue encroachment of the responsibilities of the Comptroller.[6]

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[6] It is noteworthy in this regard that in First National Bank of Youngstown v. Hughes, *supra*, it was determined that examination of deposits with the bank to verify depositors' tax returns was not a visitorial power precluded by section 484.

In summary, all of the arguments raised by the Bank in support of the proposition that Minn. Stat. § 345.53 is preempted were correctly recognized by the Minnesota Supreme Court as fallacious and without authority. In upholding the application of the Kentucky unclaimed property law to national banks, this Court explained:

> Since Kentucky may enforce its statute requiring the surrender to it of presumptively abandoned accounts in national as well as state banks, it may, as an appropriate incident to this exercise of authority, require the banks to file reports of inactive accounts, as the state law directs.

Anderson National Bank v. Luckett, 321 U.S. 233, 252-53 (1944).

Thus, Minnesota, too, may require national banks to report and surrender to it unclaimed property. And, as Kentucky could, it may enforce its statute that requires these actions. It follows that an appropriate incident of that enforcement authority is the power to examine the records of national banks to verify their unclaimed property reports. Indeed, long before the instant case arose, the New Mexico Supreme Court so held. *Clovis National Bank v. Calloway*, 69 N.M. 119, 364 P.2d 748 (1961). The national bank system has not been adversely affected by that decision, and there is no reason to believe that the identical decision of the Minnesota Supreme Court will do so. The Bank's challenge to the State's authority to verify unclaimed property reports presents no substantial question for this Court's review.

CONCLUSION

For the foregoing reasons, the appellee respectfully submits that this appeal presents no substantial question for the decision of this Court, and the appeal should therefore be dismissed.

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Office - Supreme Court, U.S.
FILED
APR 26 1982
STEVAS.

No. 81-1738

IN THE

Supreme Court of the United States

October Term, 1981

THE FIRST NATIONAL BANK OF SAINT PAUL,
Appellant,

vs.

STATE OF MINNESOTA,
By JIM LORD, Its Treasurer,
Appellee.

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF MINNESOTA

REPLY OF APPELLANT TO MOTION TO DISMISS

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The state treasurer's contention that this appeal presents no substantial federal question ignores the enormous potential consequences of the Minnesota Supreme Court's decision to national banking activities other than dormant accounts. The Motion to Dismiss misconstrues the meaning of "visitorial powers" as applied in the instant context. The state treasurer also misinterprets the intent of Congress and the position of the Comptroller that state authorities are not authorized to examine national banks' records for the purpose of enforcing state laws.

1. In arguing that the Bank's challenge to the state treasurer's attempt to examine its records and enforce state law presents no substantial federal question, the state treasurer has wholly ignored the far-reaching impact which the lower court's decision will have on the operations of national banks and the review of those operations by the Comptroller. As pointed out in the Jurisdictional Statement (at 11) and in the brief of the American Bankers Association as Amicus Curiae (*Amicus Brief* at 6-8), the rationale of the Minnesota Supreme Court, if left standing, could lead to extensive examinations by a host of state officials to enforce a multitude of state and local regulations.

Heretofore, national banks have not been burdened with duplicative requests to examine their records and enforce laws because of the uniform position of national banks and the Comptroller that, with minor exceptions not relevant herein, the Comptroller was exclusively authorized by Congress to perform those functions. The state Supreme Court's radical departure from past practice and interpretation of 12 U.S.C. § 484 poses a substantial question which goes to the heart of the dual banking system.

2. The state treasurer urges that his efforts to examine the Bank's records and enforce the Act are not preempted by section 484 because they are not an exercise of "visitorial powers". The state treasurer thus seeks to define away the issue by ignoring the plain meaning of the term "visitorial".

The state treasurer is simply wrong in concluding that cases construing the phrase "visitorial powers" establish that the phrase connotes "overall superintendence and regulation" of a national bank. (*See Motion to Dismiss* at 6-8.) Such an interpretation flies in the face of the definition of "visitation" enunciated in *First National Bank of Youngstown v. Hughes*, 6 F. 737 (Cir. Ct., N.D. Ohio 1881),[1] which has been cited approvingly by virtually every court construing the phrase. That definition requires only an act of a superior to examine into a corporation's manner of conducting business and to enforce its laws. Neither the *Hughes* definition, nor the application of that definition in any of the cases relied upon by the state treasurer, allow an exception for the "limited" type of examination and enforcement contemplated by the state treasurer herein.

The national bank examinations permitted in the cases cited in the Motion to Dismiss (at 7-8) were deemed not to constitute "visitations" under section 484 because they did not contemplate enforcement of laws dealing with the business of banking. The county auditor in *First National Bank of Youngstown v. Hughes, supra*, sought merely to verify depositors' property tax returns. The shareholder in *Guthrie v. Harkness*, 199 U.S. 148 (1905) had a common law right to examine bank records to determine the value of his investment,

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[1] *See Jurisdictional Statement* at 8.

not to enforce a law against the bank.[2] None of the cases relied upon by the state treasurer hold that "limited" examinations are not the visitorial acts of a superior simply because they do not contemplate comprehensive regulation.

As was the case with the unauthorized state visitation in *National State Bank, Elizabeth, N.J. v. Long*, 630 F.2d 981 (3rd Cir. 1980), the state treasurer's attempt to examine the Bank's records and enforce the state unclaimed property law "directly implicates concerns in the banking field" and thus constitutes a prohibited visitation.

The state treasurer urges (*Motion to Dismiss* at 9) that the state "stands in the shoes of the depositors" and is thus not acting in a superintending capacity. However, while the state treasurer may stand in the depositors' shoes for the purpose of receiving unclaimed funds, neither he nor the depositor is entitled thereby to examine national bank records and enforce an observance of state law bearing upon banking operations. In short, Congress has precluded the state treasurer in section 484 from standing in the shoes of the Comptroller.

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[2] As the Amicus Brief notes (at 11-12), a visitation was found to exist in *National Labor Relations Board v. Northern Trust Co.*, 148 F.2d 24, 29 (7th Cir.), *cert. denied*, 326 U.S. 731 (1945), (but was "authorized by [other] law" and was not found in *Bank of America N.T.&S.A. v. Douglas*, 105 F.2d 100 (D.C. Cir. 1939), where the SEC was permitted to review bank records to enforce federal security laws against a non-bank securities registrant which controlled the bank. Similarly, the SEC was permitted to review a national bank's records in *Peoples Bank of Danville v. Williams*, 449 F. Supp. 254 (W.D. Va. 1978) because it sought to investigate violations of the anti-fraud sections of the federal securities laws, having nothing to do with the business of banking.

3. The state treasurer seems to imply that the Comptroller is not concerned with national bank compliance with state laws, with enforcement of unclaimed property laws, or whether state authorities examine national bank records for "limited" purposes. (*Motion to Dismiss*, 13-16.) This implication stands in stark contrast to repeated expressions by the Comptroller of his exclusive authority to examine national bank records for the purpose of enforcing state unclaimed property laws.

The Comptroller's continuing interest in enforcing state unclaimed property laws is evidenced by the recent issuance of Banking Circular No. 148, where the Comptroller stated:

> It has been, and will continue to be, the policy of this Office to monitor national banks' compliance with applicable state laws, including abandoned property laws. To this end, we are revising our examination procedures to enable us to more effectively evaluate compliance with those laws and to assure that prompt remedial action is taken when violations are found.

Banking Circular No. 148, September 25, 1980. *See also* a recent comptroller staff interpretive letter [1981-82 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶85,267 (Legal Advisory Services Division, Letter No. 186, March 26, 1981). Moreover, in the same Congressional hearings to which the Motion to Dismiss refers (at 13-14), the Comptroller's representative testified why dormant accounts do not receive the emphasis that some other areas of examinations receive:

> In order to place the issues surrounding dormant accounts in perspective, it should be noted that we have received very few complaints from individual consumers or from State officials and have found few violations through our examination process.

Bank Treatment of Inactive Checking and Savings Accounts: Hearings Before a Subcommittee of the Committee on Government Operations of the House of Representatives, 96th Cong., 2d Sess. 263-304, 264 (July, 1980). The representative advised Congress that the type of activity sought by the state treasurer herein

> . . . to examine a national bank's books and records in order to enforce state unclaimed property laws constitutes an illegal and unauthorized attempt to exert those visitorial powers which 12 U.S.C. §484 confers exclusively on the Comptroller.

Id. at 296. Despite the state treasurer's assertions to the contrary, it is clear that the Comptroller has uniformly viewed the state treasurer's proposed examination and enforcement as a prohibited "visitation" and in conflict with his own exclusive authority.

The failure of Congress to alter section 484 to allow state examinations of national banks to enforce compliance with state unclaimed property laws, or other laws, creates an implied ratification of the Comptroller's interpretive ruling and the practice of exclusive Comptroller examination. *See Amicus Brief* at 12-16. *See also National Labor Relations Board v. Bell Aerospace Co., Div. of Textron Inc.*, 416 U.S. 267 (1974), where the Court stated:

> . . . [A] court may accord great weight to the long-standing interpretation placed on a statute by an agency charged with its administration. This is especially so where Congress has re-enacted the statute without pertinent change. In these circumstances, congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress. *Id.* at 274-75 (citations omitted).

CONCLUSION

The Minnesota Supreme Court decision, if allowed to stand, will subject national banks for the first time to duplicative examination and enforcement procedures by numerous state officials. With few exceptions not relevant herein, Congress established the Comptroller as the exclusive examining and supervisory authority with respect to all applicable laws, including state unclaimed property laws. The Comptroller is discharging that function. The state treasurer's proposed examination would conflict with the Comptroller's dominion and Congressional intent in this area. The issues presented in this appeal raise substantial federal questions which will have enormous impact on the dual banking system established by Congress. The Court should note probable jurisdiction of this appeal.

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Supreme Court, U.S.
FILED
APR 14 1982
ALEXANDER L. STEVAS
CLERK

No. 81-1738

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AMERICAN BANKERS ASSOCIATION BRIEF AS AMICUS CURIAE IN SUPPORT OF THE APPELLANT

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April 15, 1982

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D.C.

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81 Am.Jur.2d *Witnesses* § 28, p. 52. 12

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-1738

THE FIRST NATIONAL BANK OF SAINT PAUL,
Appellant,

v.

STATE OF MINNESOTA, BY JIM LORD, ITS TREASURER,
Appellee.

On Appeal From The Supreme Court
Of The State Of Minnesota

AMERICAN BANKERS ASSOCIATION BRIEF AS AMICUS CURIAE IN SUPPORT OF THE APPELLANT

INTEREST OF THE AMERICAN BANKERS ASSOCIATION

The American Bankers Association is the principal trade association of the commercial banking industry, representing approximately 90% of the industry, or about 13,130 commercial banks, located in each of the fifty states and the District of Columbia. Approximately 4,000 of the 4,400 national banks are members of the American Bankers Association.

The efforts of the State of Minnesota to examine national banks represents a significant breach in the wall carefully erected to separate state responsibilities and federal responsibilities in the area of banking law. The case possesses considerable independent importance, but becomes even more important if it is viewed as a precedent for future state examina-

tion of national banks for reasons different than the ostensible intent in this case — *i.e.*, to assure compliance with the state's abandoned property laws.

The American Bankers Association has long supported the dual banking system. The system reflects the philosophy and form of United States constitutional government, with its division of powers between the states and the federal government. The checks and balances of the system have contributed significantly to the vitality and progress of commercial banking, and have served as a deterrent to inappropriate or unduly burdensome actions at either the state or national level.

Freedom of banks to operate under either state or national charter and the maintenance of competitive balance as between state and national banks are prerequisites to the continued effectiveness of the system. In furtherance of this long-standing position, the Association hereby appears, with the consent of the parties, to urge the Court to note probable jurisdiction in this case.

SUMMARY OF THE ARGUMENT

The ability of state authorities to examine federally-chartered institutions is a function of how much power is granted to, or left to, those authorities by federal law. Lower federal courts and state supreme courts have reached conflicting and irreconcilable results in deciding those questions, leaving this Court as the only authoritative means of resolution of an important issue of federalism.

National banks are federal instrumentalities and, by reason of federal supremacy, their activities may not be unduly burdened by state interference. The Minnesota Supreme Court's judgment in this case, if upheld and carried to its logical conclusion, would cause undue burden upon national banks by subjecting them to needlessly duplicative examinations.

Moreover, the Minnesota Supreme Court's decision rests upon an erroneous construction of the federal statute vesting "visitorial powers" over national banks in the Comptroller of the Currency. With a few exceptions, that power is exclusive. The exceptions do not include a legal right on the part of state authorities to examine national banks for compliance with state law.

ARGUMENT

I.

Review Of The Decision Of The Minnesota Supreme Court Is Necessary To Resolve An Unsettled Issue Of Federal Law.

This case tests the degree to which state authorities may examine federally-chartered financial institutions, if at all, in order to enforce compliance with state laws applicable to such institutions. The Minnesota Supreme Court, in this case, has held that the state treasurer may view the books and records of a national bank in order to determine whether that bank has conformed to the state's "Uniform Disposition of Unclaimed Property Act," *Minn. Stat. Ann.* §§ 354.31-.60 (1980). The decision is consistent with an earlier decision by the New Mexico Supreme Court in *Clovis National Bank* v. *Callaway*, 69 N.M. 119, 364 P.2d 748 (1961), also dealing with a state unclaimed property act. It is inconsistent with the decisions of two United States Courts of Appeals.

In *Conference of Federal Savings & Loan Associations* v. *Stein*, 604 F.2d 1256 (9th Cir.), *aff'd mem.*, 445 U.S. 921 (1979), the court dealt with the question of whether California's "anti-redlining" statute[1] was applicable to federally-chartered savings and loan associations in California. The court divided the relevant state and federal laws and regulations into two

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[1] An anti-redlining statute is one designed to prohibit discrimination in mortgage lending based upon the geographic area in which the property to be mortgaged is located.

groups, expressly refusing to decide whether the *substantive* provisions of the state law were preempted by federal regulations. It did decide, however, that the *procedural* aspects of the state law, those "regulations providing for monitoring, for enforcement and complaint resolution mechanism and for notice," (*id.* at 1260) were preempted in the case of federally-chartered savings and loans. The court based its judgment upon the fact that

> the regulatory control of the [Federal Home Loan] Bank Board over federal savings and loan associations is so pervasive as to leave no room for state regulatory control.

Id.

As in the case of federal savings and loan associations, national banks are subject to pervasive control by the federal government — in this case the Comptroller of the Currency. This Court long ago held that the National Bank Act constitutes "by itself a complete system for the establishment and government of national banks. . . . Everything . . . [is] fully provided for." *Cook County National Bank* v. *United States*, 107 U.S. 445, 448 (1883).

Above and beyond the pervasive nature of the federal regulatory scheme, national banks also operate under a federal statute which specifically limits the "visitorial powers" to which they may be subjected. 12 U.S.C. § 484.

In *National State Bank, Elizabeth, N.J.* v. *Long*, 630 F.2d 981 (3d Cir. 1980), the court held that a state law, another "anti-redlining statute," was applicable to national banks in New Jersey. It, nevertheless, held that

> while the substantive law of New Jersey prohibiting redlining is not preempted, enforcement of the state statute

> is the responsibility of the Comptroller of the Currency rather than the State Commissioner.

Id. at 989.

To reach its decision the court relied upon 12 U.S.C. § 484, the Comptroller's interpretation of it, and the Ninth Circuit's opinion in *Conference of Federal Savings & Loan Associations, supra,* 604 F.2d.

For purposes of resolving the overriding issue of federalism in this case, it does not particularly matter that some of the cases have dealt with unclaimed property acts and some with anti-redlining acts; in short, the nature of the state law at issue is irrelevant. The question is the same in any case: Can state regulatory authorities lawfully examine federally-chartered institutions within their borders to determine compliance with state statutes which are substantively applicable to those institutions? Since some of the lower courts answer in the affirmative and others in the negative, only this Court can settle the question authoritatively.

II.

Whether State Authorities May Examine Federally-Chartered Commercial Banks Is A Substantial Question Of Federal Law Which Should Be Given Plenary Consideration.

National banks are, and have always been, subject to thorough and periodic examinations by the Comptroller of the Currency:

> The Comptroller of the Currency, with the approval of the Secretary of the Treasury, shall appoint examiners who shall examine every national bank as often as the Comptroller of the Currency shall deem necessary. The examiner making the examination of any national bank shall have power to make a thorough examination of *all the affairs of the bank.*

12 U.S.C.A. § 481 (West Supp. 1982) (Emphasis supplied).

In carrying out the responsibilities created for the Comptroller under this section of the National Bank Act, the Comptroller's examiners do examine national banks for compliance with applicable state laws, including state laws pertaining to unclaimed property. (*See* Affidavit of Edmund G. Zito, Chief National Bank Examiner, ¶ 5, App. A-19).

It is quite apparent that Congress deems examinations by the Comptroller of the Currency to be sufficient for national banks for all purposes. Indeed, section 481 appears in the form quoted above as a result of a recent amendment (Pub. L. No. 96-221, § 709, 94 Stat. 188 (1980)). Previously, the law had provided for examinations at least twice in each calendar year, and "more frequently if considered necessary." (*See* 12 U.S.C. § 481(1976)). The statutory change in 1980 thus represents a reduction in the number of mandatory examinations of national banks, and was enacted as part of the same law which included the "Financial Regulation Simplification Act of 1980." This Act expressed the concern of the Congress for regulations which "often impose costly, duplicative, and unnecessary burdens on both financial institutions and consumers." (Pub. L. No. 96-221, § 802, 94 Stat. 191 (1980)). If allowed to stand, the Minnesota Supreme Court's decision will subject national banks to *additional* examinations — by state authorities — at a time when federal law and policy directs a *reduction* in overall administrative burdens.

Theoretically, this case involves only Minnesota's unclaimed property act. That is significant enough, because all states except Colorado have unclaimed property laws, and the enforcement of those laws could be governed by the outcome of this case. But even more to the point, if Minnesota is permitted to examine national banks for purposes of its unclaimed property act, there is no rational basis for denying this state, or any other, the right to examine national banks and other federally-chartered institutions for compliance with any number of state

laws. A review of just a few examples of current state law and practice reveals the potential number and extent of examinations to which federal instrumentalities[2] may be subjected under the reasoning of the Minnesota Supreme Court.

Redlining. As discussed above, state laws prohibiting discrimination in mortgage lending based upon geographic area are probably substantively applicable to national banks. If Minnesota's Supreme Court is correct in its reasoning, there is no reason why states would not be permitted to examine national banks for compliance with the state anti-redlining laws, even though the Comptroller of the Currency already does so. In some states, anti-redlining laws are enforced by the state banking regulators (*see National State Bank, Elizabeth, N.J.* v. *Long, supra* 630 F.2d), but in other states, the laws may be enforced by a Civil Rights Commission, empowered to conduct appropriate examinations. *See, e.g., Kan. Stat. Ann.* §§ 44-1004, 44-1017 (1973); *Mass. Ann. Laws* ch. 151B, §§ 3-4 (Law Co-op 1976 and Supp. 1981).

Other Anti-Discrimination Legislation. Many states have enacted prohibitions against discrimination in the granting of credit, some of which exceed the prohibitions contained in comparable federal statutes. *Conn. Gen. Stat. Ann.* § 46a-66 (1981) and *Ind. Stat. Ann.* § 22-9-1-3, for example, prohibit discrimination by reason of physicial handicap in any credit transaction. *Mont. Rev. Code Ann.* § 64-306(7) (Supp. 1977) adds mental handicap to the list, as does *N. Mex. Stat.* § 28-1-7(H) (1978), and *Iowa Code Ann.* § 537.3311 (Supp. 1981) prohibits such discrimination because of political affiliation. If the laws are substantively applicable to federally-chartered institutions in these states, and if the Minnesota Supreme Court is correct here, then certainly the state authorities would be

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[2] National banks have been held to be federal instrumentalities. *Davis* v. *Elmira Savings Bank*, 161 U.S. 275 (1896).

authorized to examine national banks for compliance with these laws as well.

Interest on Escrow Accounts. No federal law requires national banks to pay interest on escrow accounts, but the laws of at least nine states require such interest payments as a general rule. The Comptroller of the Currency has informally ruled that national banks should conform to the requirements of state law in this regard. *See Monograph No. 8, A Compilation of Federal and State Laws Regulating Consumer Financial Services*, Vol. 2, 903-06 (Credit Research Center, Purdue University, 1977). The state bank commissioner in at least one state [3] has expressed a desire to examine federally-chartered institutions for compliance with this law. If the Minnesota Supreme Court is correct, there is no reason why this should not be done too.

Just from the above, it is clear that the reasoning of the Minnesota Supreme Court, if upheld, could subject federal instrumentalities to separate examinations by a state civil rights commission, a state bank regulator, and a state treasurer (as in this case), for compliance with various state laws — in addition to normal examinations (designed in part to cover exactly the same subject matter) by the Comptroller of the Currency. While some examination of commercial banks is necessary, any examination of a bank's books and records is disruptive of the bank's day-to-day operations. The Congress of the United States has drawn the balance between these two considerations where it deems proper, by limiting visitations of national banks to the Comptroller's Office only, with a few non-material exceptions. The State of Minnesota should not be permitted to upset that balance.

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[3] *See* Testimony of Carol Greenwald, Commissioner of Banking of Massachusetts, Oversight Hearings on Consumer Protection Activities of Federal Banking Agencies Before The Senate Committee on Banking, Housing & Urban Affairs, 94th Cong., 2d Sess. 3-7 (1976), discussed below at pp. 14-15.

III.
The Case Was Decided Incorrectly By The Minnesota Supreme Court.

As between the parties to this action, there is general agreement on at least two issues. First, the parties agree that the *substantive* law of the state, pertaining to the disposition of bank accounts which have been untouched for so long as to be deemed abandoned or unclaimed, is applicable to national banks as well as institutions chartered by the state. This Court has held that, as a general rule, state laws do govern the operations and dealings of national banks within the boundaries of the state. Indeed, the Court has held specifically that the *substantive* provisions of state unclaimed property statutes apply to national banks. *Anderson National Bank* v. *Luckett*, 321 U.S. 233 (1944). However, there is an exception to this general rule where such laws conflict with the laws of the United States or frustrate the purpose for which national banks were created. *First National Bank in St. Louis* v. *Missouri*, 263 U.S. 640, 656 (1924); *Davis* v. *Elmira Savings Bank*, *supra* 161 U.S.

The parties also agree upon the definition of the term "visitorial powers" as it is used in 12 U.S.C. § 484:

> Visitation, in law, is the act of a superior or superintending officer, who visits a corporation to examine into its manner of conducting business, and enforce an observance of its laws and regulations. Burrill defines the word to mean "inspection; superintendence; direction; regulation."

Guthrie v. *Harkness*, 199 U.S. 148, 158 (1905), quoting *First National Bank of Youngstown* v. *Hughes*, 6 F. 737, 740-41 (Cir. Ct., N.D. Ohio 1881).

The dispute between the parties, the "dispositive issue" according to the Minnesota Supreme Court,[4] is over the

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[4] *Minnesota* v. *First National Bank of Saint Paul*, Slip op. at 5 (No. 81-311).

enforcement provisons of the state's law; the question is whether these provisions are applicable to national banks, or have been preempted by federal law which provides that:

> No bank shall be subject to any visitorial powers other than such as are authorized by law, or vested in the courts of justice or such as shall be or shall have been exercised or directed by Congress, or by either House thereof, or by any committee of Congress or of either House duly authorized.

12 U.S.C. § 484 (1976).

The Minnesota Supreme Court held that the state treasurer's efforts to examine the records of the bank for compliance with the state's Uniform Disposition of Unclaimed Property Act did not constitute the exercise of a "visitorial power," and, therefore, was not prohibited by federal law. *(Id.)* The court specifically declined to decide whether the treasurer's examination was "authorized by law" within the meaning of § 484, and that issue is not before this Court.

A careful application of the definition of "visitorial powers" shows the fundamental illogic of the Minnesota Supreme Court's opinion. The state treasurer either is a "superior or superintending officer" of the national bank for the limited purpose of enforcing observance of the state's laws and regulations pertaining to unclaimed property (which are applicable to national banks), or he is not. If the treasurer *is* a superior or superintending officer, then his inspection of the bank's records or examination into this particular aspect of the bank's manner of conducting business very obviously falls within the definition of "visitorial powers." As such, his examination and inspection is prohibited specifically by the federal statute. If the treasurer is deemed *not* to have such power over national banks as to make him a "superior or superintending officer," then, of course, there is no prohibited "visitation," but at the same time, the treasurer would not seem to have any independent claim of

right to examine the bank's records at all. If the treasurer is not acting in a superintending capacity, his right to examine the records of a bank is indistinguishable from that of a man in the street.

Guthrie v. *Harkness, supra* 199 U.S., illustrates this point well. That case involved the efforts of a shareholder of a national bank to examine the bank's records in order to determine the value of holdings and ensure compliance with loan limitations. A shareholder hardly constitutes a "superior or superintending officer," so "visitorial powers" were not available to be exercised in that case, and this Court so held. Nevertheless, the shareholder was permitted to review the bank's records under an independent claim of right to do so. As the Court held, a shareholder has a common law right to inspect the records of a corporation of which he is part-owner. The state treasurer in this case possesses no such "common law" right; he possesses only such powers as are granted to him by the laws of Minnesota. Those laws, if they convey any rights on the treasurer at all with respect to national banks, would make him a "superintending officer" over the bank for this purpose.

Similarly, in *Bank of America, N.T.&S.A.* v. *Douglas,* 105 F.2d 100 (D.C. Cir. 1939), the issue was whether the Securities and Exchange Commission had the authority to subpoena certain records of the bank, against an argument by the bank that it was immune from the exercise of "visitorial powers" except by the Comptroller of the Currency. The court held that a "visitorial power" was not involved. The Securities and Exchange Commission was investigating possible violations of the Securities Exchange Act by Transamerica Corporation, the largest shareholder of the bank. Accordingly, the investigation had nothing whatsoever to do with the bank *per se,* or the superintending of *its* operations and dealings. The SEC's right to examine the bank's records came about under a claim of right separate and distinct from any claim to be a superior or

superintending officer. The Commission had the statutory obligation to investigate possible violations of law by Transamerica Corporation, and in furtherance of that duty could call upon anyone, including a bank, to testify to all material facts within one's knowledge in order to aid in the administration of justice. That is a duty shared by all citizens. *See* 81 Am.Jur.2d *Witnesses* § 28, p. 52. Under the circumstances, the SEC investigation was a singular incident, a one-time examination of records, unlike the present case which contemplates a periodic review of the bank's records in order to assure continuing compliance by the bank with a law applicable to it.

Where, as here, a bank *itself* or its operations are investigated, then the investigation is held to be "visitorial" in nature. In *National Labor Relations Board* v. *Northern Trust Co.*, 148 F.2d 24, 29 (7th Cir.), *cert. denied*, 326 U.S. 731 (1945), the banks again argued an immunity from investigation by the Board for compliance with applicable labor laws by reason of the prohibition in 12 U.S.C. § 484. The court allowed the investigation to be conducted, nonetheless. It held that the investigation *was* visitorial in nature, but that the statutory exception "authorized by [other] law" was applicable. The National Labor Relations Act specifically authorized the kind of investigation involved in the case.

12 U.S.C. § 484 was enacted as part of the National Bank Act in 1864 (Act of June 3, 1864, c. 106 § 54, 13 Stat. 116). The Comptroller of the Currency, the official responsible for the supervision of national banks, has construed the law generally to forbid state banking officials to conduct examinations or to inspect the books or records of national banks. (12 C.F.R. § 7.6025(b); 36 Fed. Reg. 17000 (1971).

Congress is well aware of this interpretation of the statute, and, by reason of its failure to change the statute, may be said to have ratified the interpretation.

In Title IV, Pub. L. No. 90-321 (80 Stat. 198 (1968)), of the Consumer Credit Protection Act, Congress established a National Commission on Consumer Finance to "study and appraise the functioning and structure of the consumer finance industry and to make a final report of its findings, recommendations and conclusions to the President and Congress by December 31, 1972." *See* 15 U.S.C. § 1601 note (1976). The Commission made its required report, entitled "Consumer Credit in the United States," on that date. Among the findings of the Commission was the following:

> [T]he Comptroller's office is the sole regulatory and supervisory authority for national banks. The FDIC and FRB defer to the Comptroller, and state agencies have no power to examine national banks. Such banks are not bound by state laws which "infringe on the national banking laws or impose an undue burden on the performance of the banks' functions;" however, the Commission is convinced that state consumer credit protection laws do not fall into such a category. As far back as 1880, the Supreme Court found that the national banking laws did not evidence a Congressional intention to exempt national banks from the ordinary rules of law affecting the legality of actions founded on local matters. If the Comptroller fails to examine for and enforce compliance of state consumer credit protection laws, national bank customers may be denied protections afforded customers of a state chartered bank next door, and citizens of the same state could unknowingly be covered by different standards of consumer credit protection. The Commission considers differing consumer credit protection standards to be inequitable.

Consumer Credit in the United States, Report of the National Commission on Consumer Finance, 54 (1972) (footnotes omitted).

In response to the perceived difficulty in assuring national bank compliance with applicable state laws under the circumstances, the Commission recommended

> that Federal law be expressly changed to authorize state officials to examine federally chartered institutions for the limited purpose of enforcing state consumer laws, but such authorization should in no way empower state officials to examine federally chartered institutions for soundness, fraudulent practices, or the like. The limited state examination should be required by law to be performed in a manner that would not disrupt or harass the federally chartered institutions.

Id. at 60.

Thus, Congress was clearly advised that its laws prohibited state examinations of federally-chartered institutions to assure compliance with state laws, and was urged vigorously to change those laws. Needless to say, Congress did not implement the recommendations of the Commission in this respect and section 484 remains unchanged.

Three and a half years later, the Senate held oversight hearings on essentially the same subject, and once again was urged to amend the law applicable to this case. Carol Greenwald, Commissioner of Banking of Massachusetts, testified concerning three state laws which she claimed had been disregarded by federally-chartered savings and loan associations, supported by the Federal Home Loan Bank Board. One law required mortgage lenders to pay interest on escrow accounts; another was an Equal Credit Opportunity Act which predated the federal equivalent; the third was the state's truth in lending act which, pursuant to 15 U.S.C. § 1633 (1976) and an order of the Federal Reserve System, 12 C.F.R. § 226.12(d) (1978), was not preempted by the federal version. She concluded that:

> The Federal agencies will not check for compliance with state . . . laws, nor will they allow appropriate state agen-

> cies to check for compliance. . . . As for national banks, the regional comptroller's office says that it does check for compliance with Massachusetts' truth in lending law; but here, too, State examiners are barred from checking on compliance.

(Oversight Hearings on Consumer Protection Activities of Federal Banking Agencies Before The Senate Committee on Banking, Housing and Urban Affairs, 94th Cong., 2d Sess. 3-7 (1976)). Commissioner Greenwald's testimony was supported by Connecticut Bank Commissioner Lawrence B. Connell, Jr., who urged an amendment to federal law to permit state examination of federally-chartered institutions for compliance with state consumer credit protection statutes in those states which were exempted from the federal act. *Id.* p. 33.

Thus, we have the spectre of state regulators, acknowledging their lack of authority to examine national banks, and urging Congress to change the law to supply that missing authority. Congress failed or declined to change the law. Now in the present case, we have a state regulator maintaining that that unchanged law has, for 118 years, permitted him to examine national banks.

In 1980, Congress enacted major changes in federal banking laws, including major changes in the methods of administrative enforcement of the Consumer Credit Protection Act by the federal banking agencies (Pub. L. No. 96-221, Tit. VI, 94 Stat. 168 (1980)), and in the very section of the National Bank Act (12 U.S.C. § 481) which grants examination authority to the Comptroller (Pub. L. No. 96-221, § 709); yet Congress did not enact any amendment which would have allowed state examinations of federally-chartered institutions for compliance with state consumer credit protection statutes. Section 484, authoritatively construed by the Comptroller of the Currency to prohibit *any* state examination or inspection of national banks,

has survived intense scrutiny in Congress. Under similar circumstances, this Court has held that:

> The failure of Congress to alter or amend the section, notwithstanding this consistent construction by the department charged with its enforcement, creates a presumption in favor of the administrative interpretation, to which we should give great weight, even if we doubted the correctness of the ruling.

Costanzo v. *Tillinghast*, 287 U.S. 341, 345 (1932).

In summary, the federal statute, 12 U.S.C. § 484, plainly prohibits the exercise of "visitorial powers" over national banks, except by the Comptroller of the Currency as a general rule. The few exceptions to the general rule are not material to this case. The law has been consistently construed to this effect by the Comptroller of the Currency; that fact is known to Congress, and Congress has not seen fit to change the law. The decision of the Minnesota Supreme Court is at variance with the plain meaning and recent history of the law. It should not be permitted to stand unreviewed and unreversed.

CONCLUSION

For all of the reasons stated herein, the American Bankers Association, as *amicus curiae*, respectfully urges the Court to note probable jurisdicion of this appeal.

Respectfully submitted,

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April 15, 1982